



**City Commission Meeting
SUPPLEMENTAL MATERIAL 1**

**City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
September 2, 2015**

Mayor Philip Levine
Vice-Mayor Edward L. Tobin
Commissioner Michael Grieco
Commissioner Joy Malakoff
Commissioner Micky Steinberg
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

City Manager Jimmy L. Morales
City Attorney Raul J. Aguila
City Clerk Rafael E. Granado

*Visit us at **www.miamibeachfl.gov** for agendas and video "streaming" of City Commission Meetings.*

ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

SUPPLEMENTAL AGENDA

C7 - Resolutions

- C7E A Resolution Approving And Authorizing The Mayor And City Clerk To Execute Amendment No. 1 To The Tyler Technologies, Inc., Agreement Between The City Of Miami Beach And Tyler Technologies, Inc., Dated October 10, 2014, For Replacing The City's Enterprise Resource Planning (ERP) System; Amending The ERP System 'Go-Live' Dates, As Provided In This Resolution.
(Procurement/Office of the City Manager)
(Memorandum & Resolution)

R5 - Ordinances

- R5K An Ordinance Amending Miami Beach City Code Chapter 82, Entitled "Public Property," By Amending Article IV Thereof Entitled "Uses In Public Right-Of-Way", By Amending Section 82-383, Entitled "Permit Fee; Penalties For Late Payments; Review Of Fee; Exception," By Amending Subsection (a) Thereof To Abate Sidewalk Café Fees For Businesses North Of 63rd Street, Through And Including September 30, 2017; Providing For Repealer, Codification, Severability, And An Effective Date. **First Reading**

(Sponsored by Commissioner Edward L. Tobin)
(Legislative Tracking: Public Works)
(Ordinance)

- R5N An Ordinance Amending Chapter 46 Of The Code Of The City Of Miami Beach, Entitled "Environment," By Amending Article III, Entitled "Litter," By Amending Division 1, Entitled "Generally," By Amending Section 46-92 To Amend The Enforcement And Penalty Provisions For Violations Of Subsections (b), (c), (d), And (e), By Increasing Penalties For Violations Of Subsections (b), (c), (d), And (e), And Imposing Criminal Penalties For Violations Of Subsection (b) On Beaches, Parks, Marinas, Piers, Docks, And Boat Ramps; To Amend Provisions In Subsections (l) And (m) Regarding Appeals From Violations; And To Amend The Provisions In Subsection (m) Regarding Liens For Unpaid Fines; And Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading**

(Sponsored by Commissioner Grieco)
(Legislative Tracking: Environment & Sustainability)
(Memorandum & Ordinance)

- R5Q An Ordinance Amending Chapter 90 Of The Code Of The City Of Miami Beach, Entitled "Solid Waste," By Amending Article II, Entitled "Administration," By Amending Section 90-39 Thereof, Entitled "Fine Schedule For Violations Issued And Applied To Owners, Agents, Tenants, Occupants, Operators Or Managers, Or Persons Responsible For The Violation," To Amend The Fine Schedules Therein; And Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading**

(Sponsored by Deede Weithorn)
(Legislative Tracking: Code Enforcement)
(Memorandum & Ordinance)

R7 - Resolutions

- R7C A Resolution Calling For A November 3, 2015 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida, A Question Asking Whether The Floor Area Ratio (FAR) For The "Ocean Terrace Overlay District," With An Underlying Zoning Designation Of "Commercial District-2" ("CD-2") And "Mixed Use Entertainment District" ("MXE"), Be Increased From A Maximum 2.0 FAR To A Maximum 3.0 FAR For Residential And Hotel Uses Only, And Allow No FAR Increase For Commercial Uses; Which Ocean Terrace Overlay District Is Located Between 73rd And 75th Streets, Collins Avenue, And Ocean Terrace?

(Sponsored by Commissioner Joy Malakoff)
(Legislative Tracking: Office of the City Attorney)
(Revised Memorandum & Resolution)

- R7D A Resolution Calling For A November 3, 2015 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether City Code Section 2-459 Should Be Amended To Include An Additional Exception Allowing Historic Preservation And Design Review Board Members Who Are Architects Or Landscape Architects To Lobby City Personnel And Agencies On Land Development Applications, Except The Board On Which They Serve And Related City Staff.

(Sponsored by Commissioner Joy Malakoff)

(Legislative Tracking: Office of the City Attorney)

(On July 8, 2015, it was requested to bring this item to September 2, 2015 - R7R)

(Revised Memorandum & Resolution)

- R7F A Resolution Approving And Authorizing The Mayor And City Clerk To Execute A Settlement Agreement Between The City (Owner), PKY Lincoln Place, LLC (Tenant), And 16th Street Partners, LLC (Master Subtenant), Relating To That Certain Agreement Of Lease (Ground Lease), Dated September 1, 1999, For The Lincoln Place Garage, Located At 1601 Washington Avenue.

(Office of the City Attorney/Tourism, Culture & Economic Development)

(Memorandum & Resolution)

- R7H A Resolution Adopting The Sixth Amendment To The Capital Budget For Fiscal Year 2014/15. **11:05 a.m. Public Hearing**

(Budget & Performance Improvement)

(Memorandum & Resolution)

Redevelopment Agency Item

- 1A A Resolution Of The Chairperson And Members Of The Miami Beach Redevelopment Agency (RDA), Accepting The Recommendations Of The Finance And Citywide Projects Committee; Waiving The Competitive Bidding Requirement, Finding Such Waiver To Be In The Best Interest Of The RDA; And Approving And Authorizing The Chairperson And Secretary To Execute A Lease Agreement With Artconnection International, Inc. (Tenant), In Connection With The Use Of Suite No. 6 At The Anchor Shops, Located At 100 16th Street, Suite No. 6, Miami Beach, Florida (Premises); Said Lease Having An Initial Term Of Five (5) Years, Commencing On November 12, 2015, With Two Renewal Options (At Tenant's Option), Of Three (3) Years And One (1) Year And 364 Days, Respectively.

2:00 p.m. Public Hearing

(Tourism, Culture & Economic Development)

(Lease Agreement)

THIS PAGE INTENTIONALLY LEFT BLANK

Condensed Title:

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Approving And Authorizing The Mayor And City Clerk To Execute Amendment No. 1 To The Tyler Technologies, Inc., Agreement Between The City Of Miami Beach And Tyler Technologies, Inc., Dated October 10, 2014 Amending The ERP System 'Go-Live' Dates, To The Contract With Tyler Technologies, Inc.

Key Intended Outcome Supported:

Streamline the delivery of services through all departments. Strengthen internal controls to achieve more accountability. Improve building/development-related processes from single family to the large development projects.

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Item Summary/Recommendation:

On October 10, 2014, the City Commission approved an agreement with Tyler Technologies, Inc., for replacing the City's current enterprise resource planning (ERP) system, known as Eden, as well as a discussion on Permits Plus, the City's system for permitting and licensing. The replacement of these systems are a key part of the Administration's goal of re-engineering core business process to maximize efficiencies and service to constituents, as well as improve internal controls.

The original contract called for certain "go-Live" dates for each of the system modules which include: Financials, EnerGov (permitting and licensing), HR / Payroll, and Utility Billing / Revenue.

However, at its meeting dated July 16, 2015, at the advice of Tyler, the EMA CMB Steering Committee agreed to consider an amendment to the go-live dates. The committee agreed to perform the system implementation after the City's audit activities are complete in order to ensure the availability of subject matter experts (SMEs) of the project.

The committee also decided that EnerGov should go live at the same time as Munis Financials to ensure the financial transactions related to permits are contained within a single financial system, instead of spanning both the old and new financial system.

As a result, the City and Tyler Technologies would like to amend the "go-live" dates as follows:

- a. Phase 1 – Financials: changed from October 1, 2015 to April 1, 2016.
- b. Phase 2 – EnerGov: changed from December 1, 2015 to April 1, 2016.
- c. Phase 3 – HR/Payroll: changed from July 1, 2016 to January 1, 2017.
- d. Phase 4 – Utility Billing and Revenue: changed from July 1, 2017 to January 1, 2018.

RECOMMENDATION

Approve the Resolution.

Advisory Board Recommendation:

Endorsed by the Finance and City-Wide Projects Committee on June 20, 2014.

Financial Information:

Source of Funds:	Amount	Account
1		

Financial Impact Summary:**City Clerk's Office Legislative Tracking:**

Ariel Sosa, ext. 7040 or Mark Taxis, ext. 6829

Sign-Offs:

Department Director	Assistant City Manager	City Manager
AS  AD 	MT 	JLM 

T:\AGENDA\2015\September\Tyler amendment 1 - SUMMARY - for merge.doc





MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy Morales, City Manager

DATE: September 2, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE TYLER TECHNOLOGIES, INC., AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND TYLER TECHNOLOGIES, INC., DATED OCTOBER 10, 2014 AMENDING THE ERP SYSTEM 'GO-LIVE' DATES, TO THE CONTRACT WITH TYLER TECHNOLOGIES, INC**

FUNDING

N/A

BACKGROUND

On October 10, 2014, the City Commission approved an agreement with Tyler Technologies, Inc., for replacing the City's current enterprise resource planning (ERP) system, known as Eden, as well as a discussion on Permits Plus, the City's system for permitting and licensing. The replacement of these systems are a key part of the Administration's goal of re-engineering core business process to maximize efficiencies and service to constituents, as well as improve internal controls.

The original contract called for certain "go-Live" dates for each of the system modules which include: Financials, EnerGov (permitting and licensing), HR / Payroll, and Utility Billing / Revenue.

However, the EMA CMB Steering Committee met on July 16, 2015, and at the advice of Tyler, agreed to consider an amendment to the go-live dates. The committee agreed to perform the system implementation after the City's audit activities are complete in order to ensure the availability of subject matter experts (SMEs) of the project.

The committee also decided that EnerGov should go live at the same time as Munis Financials to ensure the financial transactions related to permits are contained within a single financial system, instead of spanning both the old and new financial system.

As a result, the City and Tyler Technologies recommends amending the "go-live" dates as follows:

- a. Phase 1 – Financials: changed from October 1, 2015 to April 1, 2016.
- b. Phase 2 – EnerGov: changed from December 1, 2015 to April 1, 2016.
- c. Phase 3 – HR/Payroll: changed from July 1, 2016 to January 1, 2017.
- d. Phase 4 – Utility Billing and Revenue: changed from July 1, 2017 to January 1, 2018.

RECOMMENDATION

The City Manager recommends approval of a Resolution of the Mayor and City Commission of the City of Miami Beach, Florida, approving and authorizing the Mayor and City Clerk to execute Amendment No. 1 to the Tyler Technologies, Inc., Agreement between the City Of Miami Beach and Tyler Technologies, Inc., Dated October 10, 2014 Amending the ERP System 'Go-Live' Dates, to the contract with Tyler Technologies,

ATTACHMENTS

Appendix A – Amendment #1

JLM/MT/AD/AS

T:\AGENDA\2015\September\IT\Tyler Amendment #1 - MEMO.docx

**AMENDMENT NO. 1 TO THE AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA
AND
TYLER TECHNOLOGIES, INC.,
DATED OCTOBER 2, 2014
FOR THE MUNIS AND ENERGOV ENTERPRISE RESOURCE PLANNING SYSTEMS**

This Amendment No. 1 (Amendment) to the Agreement is entered into this ____ day of _____, 2015 (Effective Date), by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (City), and Tyler Technologies, Inc., a corporation having its principal place of business at One Tyler Drive, Yarmouth, Maine 04096 (Tyler), and hereby amend the Agreement as follows:

RECITALS

WHEREAS, on October 10, 2014, the City Commission approved an agreement with Tyler for replacement the City's current enterprise resource planning (ERP) systems with Munis and EnerGov, both owned by Tyler; and

WHEREAS, the replacement of these systems are a key part of the Administration's goal of re-engineering core business process to maximize efficiencies and service to constituents, as well as improve internal controls; and

WHEREAS, the original contract called for certain "go-Live" dates for each of the system modules which include: Financials, EnerGov (permitting and licensing), HR / Payroll, and Utility Billing / Revenue; and

WHEREAS, the original "Go-Live" dates stipulated in the contract interfere with the completion of the City's financial audits and annual financial report preparation; and

WHEREAS, the City's Steering Committee, appointed by the City Manager to implement the ERP systems, met on July 16, 2015, and at the advice of Tyler, agreed to consider an amendment to the go-live dates as indicated herein.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Tyler hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

The system module "Go Live" dates are modified hereto as follows:

- a. Phase 1 – Financials: from October 1, 2015 to April 1, 2016.
- b. Phase 2 – EnerGov: from December 1, 2015 to April 1, 2016.
- c. Phase 3 – HR/Payroll: from July 1, 2016 to January 1, 2017.
- d. Phase 4 – Utility Billing and Revenue: from July 1, 2017 to January 1, 2018.

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

ATTEST:

By:

Rafael E. Granado, City Clerk

Philip Levine, Mayor

Date

Date

FOR TYLER:

ATTEST:

By:

Secretary

President

Print Name

Print Name

Date

Date

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE TYLER TECHNOLOGIES, INC., AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND TYLER TECHNOLOGIES, INC., DATED OCTOBER 10, 2014, FOR REPLACING THE CITY'S ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM; AMENDING THE ERP SYSTEM 'GO-LIVE' DATES, AS PROVIDED IN THIS RESOLUTION.

WHEREAS, on October 10, 2014, the City Commission approved an agreement with Tyler Technologies, Inc., for replacing the City's current enterprise resource planning (ERP) system, known as Eden (the "Agreement"); and

WHEREAS, the replacement of these systems is a key part of the Administration's goal of re-engineering core business process to maximize efficiencies and service to constituents, as well as improve internal controls; and

WHEREAS, the Agreement called for certain "go-live" dates for each of the ERP system modules which include: Financials, EnerGov (permitting and licensing), HR / Payroll, and Utility Billing / Revenue; and

WHEREAS, the Steering Committee, appointed by the City Manager to oversee the implementation of the ERP system, met on July 16, 2015 and, at the advice of Tyler, agreed to consider an amendment to the go-live dates; and

WHEREAS, the Committee agreed to perform the system implementation after the City's audit activities are complete, in order to ensure the availability of subject matter experts (SMEs) of the project; and

WHEREAS, the Committee also decided that EnerGov should go live at the same time as Munis Financials to ensure the financial transactions related to permits are contained within a single financial system, instead of spanning both the old and new financial system; and

WHEREAS, As a result, the City and Tyler Technologies recommend amending the "go-live" dates in the Agreement as follows:

- a. Phase 1 – Financials: changed from October 1, 2015 to April 1, 2016;
- b. Phase 2 – EnerGov: changed from December 1, 2015 to April 1, 2016;
- c. Phase 3 – HR/Payroll: changed from July 1, 2016 to January 1, 2017; and
- d. Phase 4 – Utility Billing and Revenue: changed from July 1, 2017 to January 1, 2018.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH FLORIDA, that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute Amendment No. 1 to the Tyler Technologies, Inc., Agreement between the City of Miami Beach and Tyler Technologies, Inc., dated October 10, 2014, for replacing the City's Enterprise Resource Planning (ERP) system; amending the ERP system 'go-live' dates, as provided in this Resolution.

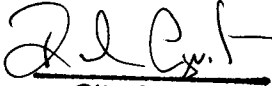
PASSED and **ADOPTED** this _____ day of September, 2015.

ATTESTED BY:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 8/27/15
City Attorney Date

THIS PAGE INTENTIONALLY LEFT BLANK

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 82, ENTITLED "PUBLIC PROPERTY", BY AMENDING ARTICLE IV THEREOF ENTITLED "USES IN PUBLIC RIGHT-OF-WAY", BY AMENDING SECTION 82-383, ENTITLED "PERMIT FEE; PENALTIES FOR LATE PAYMENTS; REVIEW OF FEE; EXCEPTION," BY AMENDING SUBSECTION (a) THEREOF TO ABATE SIDEWALK CAFÉ FEES FOR BUSINESSES NORTH OF 63RD STREET, THROUGH AND INCLUDING SEPTEMBER 30, 2017; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Miami Beach City Code Chapter 82 authorizes the City to charge restaurants with sidewalk cafes a \$150.00 annual permit fee, plus \$20.00 per square foot for the café area. The City does not charge Sidewalk Café fees for businesses situated on State Roads because they were outside its jurisdiction. This created a competitive disadvantage for sidewalk cafes on City streets in the North beach Area; and

WHEREAS, in 1998, pursuant to Ordinance No. 98-3146, Sidewalk Café fees were abated during the North Shore construction project and for a year after completion as an economic development measure. Pursuant to Ordinance No. 2000-3237 adopted on April 12, 2000, the City Commission extended the fee waiver provisions to September 30, 2001; and

WHEREAS, on February 26, 2003, the City Commission adopted Ordinance No. 2003-3397 which reinstated the fee waiver provisions subject to a two year budget analysis and review by the Administration. Later that same year, the City Commission adopted Ordinance No. 2003-3423 on July 30, 2003 repealing the Sidewalk Café fee abatement provisions.

WHEREAS, at its July 19, 2013 meeting, the City Commission heard Item R9P, "A Discussion To Immediately Reinstate The Fee Waiver For Sidewalk Cafes In North Beach" and approved a referral to the Finance and Citywide Projects Committee (FCWPC). In addition, the Commission requested that a new fee abatement program be established for the square footage fee on sidewalk café permits issued for locations north of 63rd Street; and

WHEREAS, at its September 19, 2013, the FCWPC Committee recommended that the sidewalk café fees be waived; and

WHEREAS, at its October 2013 meeting, the City Commission adopted Ordinance No. 2013-3824 which waived square footage fees for sidewalk cafes north of 63rd Street through and including September 30, 2015, and required a budget analysis and review by the City Administration by September 30, 2015, in order to determine whether the abatement should sunset on September 30, 2015 or should be extended by Ordinance; and

WHEREAS, the Miami Beach City Commission desires to encourage continued economic development in the North Beach area by extending the sidewalk café square footage fee waiver provision for an additional two years through and including September 30, 2017; and

WHEREAS, presently, north of 63rd Street, there are three (3) restaurants with sidewalk cafes with a total footprint of 985 square feet that are not on State roadways and nine (9) sidewalk cafes with a total footprint of 880 square feet on State roadways.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Section 82-383, of Chapter 82 of the Miami Beach City Code is hereby amended as follows:

CHAPTER 82

PUBLIC PROPERTY

* * *

Article IV. Uses In Public Rights-Of-Way

* * *

Division 5. Sidewalk Cafes

* * *

Subdivision II. Permit

* * *

Sec. 82-383. Permit fee; penalties for late payments; review of fee; exception.

- (a) The annual permit fee for operation of a sidewalk café shall be as set forth in appendix A, and shall be based on a per square foot calculation of permitted sidewalk area (including the area between the tables and chairs). Notwithstanding any other paragraphs or provisions of this article, no square footage fee as required by this section shall be required for the operation of sidewalk cafes north of 63rd Street through and including September 30, ~~2015~~ 2017. The abatement of sidewalk café square footage fees for businesses north of 63rd Street shall be the subject of a budget analysis and review by the City Administration by September 30, ~~2015~~ 2017. However a permit must be obtained and the annual base application fee required by subsection 82-382(b)(9) shall be paid for the operation of sidewalk cafes north of 63rd Street.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect the _____ day of _____, 2015.

PASSED and **ADOPTED** this _____ day of _____, 2015.

ATTEST:

Rafael E. Granado

Philip Levine, Mayor

(Sponsored by Vice Mayor Edward Tobin)

Underline denotes additions
~~Strike through~~ denotes deletions.

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Rafael 8/24/15
City Attorney Date

THIS PAGE INTENTIONALLY LEFT BLANK

Condensed Title:

First Reading Of An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Chapter 46 Of The Code Of The City Of Miami Beach, Entitled "Environment," By Amending Article III, Entitled "Litter," By Amending Division 1, Entitled "Generally," By Amending Section 46-92 To Amend The Enforcement And Penalty Provisions For Violations Of Subsections (B), (C), (D), And (E), By Increasing Penalties For Violations Of Subsections (B), (C), (D), And (E), And Imposing Criminal Penalties For Violations Of Subsection (B) On Beaches, Parks, Marinas, Piers, Docks, and Boat Ramps; To Amend Provisions In Subsections (L) And (M) Regarding Appeals From Violations; And To Amend The Provisions In Subsection (M) Regarding Liens For Unpaid Fines; And Providing For Repealer, Severability, Codification, And An Effective Date.

Key Intended Outcome Supported:

Enhance the Environmental Sustainability of the Community.

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Item Summary/Recommendation:**FIRST READING**

Miami Beach is a barrier island with approximately 70 miles of shoreline along numerous canals and waterways, including the Biscayne Bay Aquatic Preserve. The waters surrounding the City support a wide variety of flora and fauna. The environmental impact of litter is particularly harmful on the City's beaches, parks, marinas, piers, docks, and boat ramps, because of the likelihood of litter entering the City's canals and waterways, as well as the Atlantic Ocean and Biscayne Bay Aquatic Preserve. Debris floating in urban waterways and concentrated along the banks of our waterways and beaches also has social impacts.

The proposed Ordinance amends Chapter 46 of the City Code by amending Section 46-92 to increase the fines and penalties for violations related to litter. The intent of these proposed increases is to change negative behavior and deter future violations in order to safeguard and improve the environment and community well-being of the City. The proposed fines for carrying onto any beach within the City a glass or metal bottle or container; carrying any expanded polystyrene product onto any beach or park within the City, or onto any City marina, pier, dock, or boat ramp; or for the provision by a business of plastic straws to a patron on any City beach, are as follows: (i) First offense within a 12-month period: \$100.00 civil fine. (ii) Second offense within a 12-month period: \$200.00 civil fine. (iii) Third or subsequent offense within a 12-month period: \$500.00 civil fine.

The fines and penalties for litter violations that take place anywhere other than a beach or park within the City, or a City marina, pier dock, or boat ramp; the use of leaf blowers, or any other means, to discard garbage, litter, or yard clippings onto public or private property; or the failure of a restaurant with take-out service to have up to four garbage containers in front of and within 50 feet in each direction of the premises, are as follows: (i) First offense within a 12-month period: \$1,000.00 fine. (ii) Second offense within a 12-month period: \$2,000.00 fine. (iii) Third or subsequent offense within a 12-month period: \$3,000.00 fine.

The fines and penalties for litter violations that take place on a beach or park within the City, or on a City marina, pier, dock, or boat ramp, shall be a second degree misdemeanor punishable by imposition of a fine not to exceed \$500.00, or by imprisonment not to exceed 60 days, or both. The Ordinance also amends provisions in Section 46-92 that relate to appeals from violations and liens for unpaid fines.

The proposed Ordinance has been referred by Commissioner Michael Grieco. The Administration recommends that the City Commission adopt the proposed Ordinance on first reading.

Advisory Board Recommendation:**Financial Information:**

Source of Funds:	Amount	Account
OBPI	1	
	Total	

City Clerk's Office Legislative Tracking:

Elizabeth Wheaton ext. 6121

Sign-Offs:

Assistant City Manager M. J. A.	City Manager JLM
------------------------------------	---------------------

T:\AGENDA\2015\September\ENVIRONMENTAL\Polystyrene - Summary.doc



MIAMI BEACH



COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 2, 2015

FIRST READING

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 46-92 TO AMEND THE ENFORCEMENT AND PENALTY PROVISIONS FOR VIOLATIONS OF SUBSECTIONS (B), (C), (D), AND (E), BY INCREASING PENALTIES FOR VIOLATIONS OF SUBSECTIONS (B), (C), (D), AND (E), AND IMPOSING CRIMINAL PENALTIES FOR VIOLATIONS OF SUBSECTION (B) ON BEACHES, PARKS, MARINAS, PIERS, DOCKS, AND BOAT RAMPS; TO AMEND PROVISIONS IN SUBSECTIONS (L) AND (M) REGARDING APPEALS FROM VIOLATIONS; AND TO AMEND THE PROVISIONS IN SUBSECTION (M) REGARDING LIENS FOR UNPAID FINES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

The proposed Ordinance has been referred by Commissioner Michael Grieco. The Administration recommends that the City Commission approve the Ordinance on First Reading.

BACKGROUND

Miami Beach is a barrier island with approximately 70 miles of shoreline along numerous canals and waterways, including Indian Creek, Surprise Lake, Lake Pancoast as well as the Atlantic Ocean and the Biscayne Bay Aquatic Preserve. The waters surrounding the City support a wide variety of flora and fauna, including threatened and endangered species like the West Indian manatee, the American crocodile, Johnson's seagrass, and smalltooth sawfish. These waters also act as nurseries and habitat for migratory birds, including brown pelicans and ospreys, and for commercially and recreationally important fish, such as snapper, sailfish, and mahi-mahi. Furthermore, the City's beaches support shorebird species, including seagulls and royal terns, and are a designated nesting habitat for the protected Loggerhead, Green, and Leatherback sea turtles.

The environmental impact of litter is particularly harmful on the City's beaches, parks, marinas, piers, docks, and boat ramps, because of the likelihood of litter entering the City's canals and waterways, as well as the Atlantic Ocean and Biscayne Bay Aquatic Preserve. Litter in the waterways can have devastating impacts on marine life. For example, plastic bags and plastic wrap can asphyxiate marine animals and fish. Trash, such as cigarettes and silicon packets, can also make animals sick

or kill them. As such, it is critical that the City limit pollutants from entering its vast system of interconnected waterways and sensitive marine habitats.

Debris floating in urban waterways and concentrated along the banks of our waterways and beaches also has social impacts. Accumulated litter can clog storm-water drains and cause flooding in the urban environment. Visible litter also reduces the visual attractiveness of our City, degrades the quality of life for our residents and visitors, and reduces the recreational value of our natural environment. It decreases the desirability of our neighborhoods, which can reduce property values and result in economic decay. Economic decay is associated with apathy and crime, which in turn, decreases the overall quality of life in the community.

The City has taken a number of steps to reduce litter including prohibiting litter on public and private property; prohibiting the use of glass or metal bottles or containers on City beaches; restricting the sale and use of expanded polystyrene products; prohibiting the carrying of expanded polystyrene products onto City parks and beaches, or onto any City marina, pier, dock, or boat ramp; prohibiting the service of plastic straws on City beaches; prohibiting the use of leaf blowers, or any other means, to discard garbage, litter, or yard clippings onto public or private property; and requiring that restaurants with take-out service have garbage containers in front of and within 50 feet in each direction of the premises.

The proposed Ordinance amends Chapter 46 of the City Code by amending Section 46-92 to increase the fines and penalties for violations related to litter. The intent of these proposed increases in fines and penalties is to change negative behavior and deter future violations in order to safeguard and improve the environment and community well-being of the City.

The proposed fines for carrying onto any beach within the City a glass or metal bottle or container; carrying any expanded polystyrene product onto any beach or park within the City, or onto any City marina, pier, dock, or boat ramp; or for the provision by a business of plastic straws to a patron on any City beach, are as follows:

- (i) First offense within a 12-month period: \$100.00 civil fine.
- (ii) Second offense within a 12-month period: \$200.00 civil fine.
- (iii) Third or subsequent offense within a 12-month period: \$500.00 civil fine.

The fines and penalties for litter violations that take place anywhere other than a beach or park within the City, or a City marina, pier dock, or boat ramp; the use of leaf blowers, or any other means, to discard garbage, litter, or yard clippings onto public or private property; or the failure of a restaurant with take-out service to have up to four garbage containers in front of and within 50 feet in each direction of the premises, are as follows:

- (i) First offense within a 12-month period: \$1,000.00 fine.
- (ii) Second offense within a 12-month period: \$2,000.00 fine.
- (iii) Third or subsequent offense within a 12-month period: \$3,000.00 fine.

The fines and penalties for litter violations that take place on a beach or park within the City, or on a City marina, pier, dock, or boat ramp, shall be a second degree misdemeanor punishable by imposition of a fine not to exceed \$500.00, or by imprisonment not to exceed 60 days, or both.

The Ordinance also amends provisions in Section 46-92 that relate to appeals from violations and liens for unpaid fines.

CONCLUSION

The Administration recommends approving the Ordinance.

Attachment: Enhanced Litter Fines Ordinance

MT/ESW/MKW/NK

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 46-92 TO AMEND THE ENFORCEMENT AND PENALTY PROVISIONS FOR VIOLATIONS OF SUBSECTIONS (B), (C), (D), AND (E), BY INCREASING PENALTIES FOR VIOLATIONS OF SUBSECTIONS (B), (C), (D), AND (E), AND IMPOSING CRIMINAL PENALTIES FOR VIOLATIONS OF SUBSECTION (B) ON BEACHES, PARKS, MARINAS, PIERS, DOCKS, AND BOAT RAMPS; TO AMEND PROVISIONS IN SUBSECTIONS (L) AND (M) REGARDING APPEALS FROM VIOLATIONS; AND TO AMEND THE PROVISIONS IN SUBSECTION (M) REGARDING LIENS FOR UNPAID FINES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City"), a world-renowned tourist destination, known for its miles of beautiful beaches, declares that it is in the interest of the public health, safety, and welfare of its residents and visitors to reduce litter and pollutants on the lands and in the waters of the City, and along its shores and beaches; and

WHEREAS, the City is comprised of a number of islands with approximately 70 miles of shoreline along numerous canals and waterways, the Atlantic Ocean, and the Biscayne Bay Aquatic Preserve, all of which support a wide variety of flora and fauna; and

WHEREAS, the visual and sanitary blight caused by litter detracts from the City's quality of life and negatively impacts the City's residents, visitors, and businesses; and

WHEREAS, the environmental impact of litter is particularly harmful on the City's beaches, parks, marinas, piers, docks, and boat ramps, because of the likelihood of litter entering the City's canals and waterways, as well as the Atlantic Ocean and the Biscayne Bay Aquatic Preserve; and

WHEREAS, litter accumulates in and obstructs the City's stormwater management infrastructure; and

WHEREAS, Section 46-92 of the City Code prohibits, among other things, littering on public or private property; carrying glass or metal bottles or containers onto beaches within the City; carrying any expanded polystyrene product onto any beach or park within the City, or onto any City marina, pier, dock, or boat ramp; the provision of plastic straws by businesses to patrons on any beach within the City; and the use of leaf blowers or any other means to cause litter on public or private property; and

WHEREAS, Section 46-92 also requires restaurants with take-out service to have up to four garbage containers in front of and within 50 feet in each direction of the premises; and

WHEREAS, as an environmental leader among local governments in the State of Florida, the City, by virtue of this Ordinance, will strengthen its litter and environmental protection laws by increasing penalties for violations of Section 46-92, and imposing criminal penalties for litter violations on a beach or park within the City, or on a City marina, pier, dock, or boat ramp; and

WHEREAS, this Ordinance will preserve and enhance the environment of the City of Miami Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Section 46-92 of Division 1 of Article III of Chapter 46 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 46
ENVIRONMENT

* * *

ARTICLE III. Litter

DIVISION 1. Generally

* * *

Sec. 46-92. Litter; definitions; prohibitions on litter; penalties for litter and commercial handbill violations; commercial handbill regulations, fines, and rebuttable presumptions; seizure and removal of litter by the city; enforcement; appeals; liens.

(a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Benefactor* means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.
- (2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.
- (3) *Handbill* means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.
- (4) *Commercial handbill* means any handbill that conveys any information about any good or service provided by a business.
- (5) *Litter* means any paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused

cigarettes, cigars, pipe or chewing tobacco, polystyrene or plastic products, or other waste, including, but not limited to, tree, plant, and grass cuttings, leaves, or other yard maintenance debris, that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or in a gutter, drain, or sewer, or on any other public property, right-of-way or place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.

- (6) *One day* means a 24-hour period from noon to noon.
 - (7) *Person, benefactor, or owner* include, within their respective meanings, either an individual or an entity.
 - (8) *Right-of-way* means and includes, but is not limited to, any state, county, or city-owned public street, sidewalk, street corner, curb, bicycle path, or pedestrian walkway.
 - (9) *Polystyrene* means a thermoplastic polymer comprised of at least 80 percent styrene or para-methylstyrene by weight.
 - (10) *Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).
- (b) *Litter prohibited.* It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, sidewalk cafe areas, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, including, but not limited to, sidewalk cafe furniture and fixtures, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.
- (c) *Prohibitions on beaches, marinas, piers, docks, boat ramps, and in parks.* It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container. In addition, it shall be unlawful for any person to carry any expanded polystyrene product onto any beach or park within the city, or onto any city marina, pier, dock, or boat ramp, or for any business to provide plastic

straws with the service or delivery of any beverage to patrons on any beach within the city.

- (d) *Prohibitions on causing litter in sewers and on public and private property.* It shall be unlawful for any person to use leaf blowers, or any other means, to sweep, cast or throw, or cause to be cast or thrown, or discarded into any of the gutters, drains, sewers, or public rights-of-way within the city, or upon any adjacent public or private real or personal property, any garbage, litter, paper, handbill, trash, tree, plant, or grass cuttings, leaves, yard maintenance debris, or other objects or substances.
- (e) *Garbage container requirements for restaurants.* All restaurants with take-out service shall have up to four garbage containers, as need requires, based on the determination of the city manager or his designee. The containers shall be located in front of and within 50 feet in each direction of the premises at locations approved by the city manager or his designee. These containers shall be kept in clean and sanitary condition at all times and shall be emptied daily or more frequently if necessary to prevent overflowing. The garbage containers required by this section are in addition to those required by chapter 90 of this Code.
- (f) *Penalties for violations.* The following civil fines and penalties shall be imposed for violations of this section, except as provided in subsection (h) below:
 - (1) For violations of subsection (c):
 - a. First offense within a 12-month period: ~~\$50.00~~ \$100.00 civil fine.
 - ~~(2) b.~~ Second offense within a 12-month period: ~~\$100.00~~ \$200.00 civil fine.
 - ~~(3) c.~~ Third or subsequent offense within a 12-month period: \$500.00 civil fine.
 - (2) For violations of subsection (b) that take place anywhere other than a beach or park within the City, or a City marina, pier, dock, or boat ramp, or for violations of subsections (d) or (e):
 - a. First offense within a 12-month period: \$1,000.00 civil fine.
 - b. Second offense within a 12-month period: \$2,000.00 civil fine.
 - c. Third or subsequent offense within a 12-month period: \$3,000.00 civil fine.
 - (3) A violation of subsection (b) that takes place on a beach or park within the City, or on a City marina, pier, dock, or boat ramp, shall be a second degree misdemeanor punishable by imposition of a fine not to exceed \$500.00, or by imprisonment not to exceed 60 days, or both.
 - (4) In lieu of a civil fine, the special master may accept voluntary community service removing litter in the city equivalent to one hour of community service for each ~~\$5.00~~ \$50.00 of an imposed civil fine. If the community service is not completed within six months of an adjudication of guilt, the fine shall be reinstated.

* * *

(k) *Removal of litter by the city.* The city may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.

(l) *Enforcement by code compliance officers; notice of violation.* ~~If~~ Except as to subsection (f)(3) herein, which shall be enforced by the police department, if a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this article, such code compliance officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ~~20~~ 10 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.

(m) *Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.*

(1) A violator who has been served with a civil notice of violation shall elect either to:

a. Pay the civil fine in the manner indicated on the notice; or

b. ~~Request an administrative hearing before a special master appointed by the city commission upon recommendation of the city manager to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation, which hearing must be requested within ten (10) days of service of the notice of violation.~~

(2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections ~~102-384 and 102-385~~ 30-72 and 30-73 of the City Code.

(3) ~~If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period~~ The failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing, and shall be treated as an admission of the violation, and for which fines and penalties may be assessed accordingly.

(4) Any party aggrieved by the a decision of the special master may appeal the ~~that~~ decision in accordance with law to a court of competent jurisdiction.

(5) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.

- (6) Other than the option to accept voluntary community service in lieu of a civil fine pursuant to subsection (f)(4), the special master shall not have discretion to alter the penalties prescribed in subsections (f)(1) or (f)(2).
- (n) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*
- (1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
- (2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator, ~~and it which~~ which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. ~~After two months from the filing~~ Three (3) months after the recording of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien, for the amount of the lien, plus accrued interest.
- (o) *Planning board authority.* Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.
- (p) *Injunctive relief.* As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2015.

PASSED AND ADOPTED this _____ day of _____, 2015.

ATTEST:

Rafael E. Granado, City Clerk

Philip Levine, Mayor

(Sponsored by Commissioner Michael Grieco)

Underline denotes additions

~~Strike through~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Phil Levine
City Attorney

8/27/15
Date

NK

THIS PAGE INTENTIONALLY LEFT BLANK

Condensed Title:

Ordinance Amending Chapter 90, Entitled "Solid Waste," By Amending Article II, Entitled "Administration," By Amending Section 90-39 Thereof, Entitled "Fine Schedule For Violations Issued And Applied To Owners, Agents, Tenants, Occupants, Operators Or Managers, Or Persons Responsible For The Violation," To Amend The Fine Schedules Therein.

Key Intended Outcome Supported:

Strengthen internal controls to achieve more accountability.

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Item Summary/Recommendation:**FIRST READING**

This is a request regarding proposed amendments of Chapter 90, Subsection 39 of the City of Miami Beach Code of Ordinances, pertaining to Solid Waste violations. The request is sponsored by Commissioner Deede Weithorn.

Research reflects that some solid waste violations in Chapter 90 of the City of Miami Beach Code have not been amended for a number of years. Thus, the Administration recommends that solid waste fines, which include but are not limited to illegal disposal of biohazardous and/or hazardous waste (currently at \$250 for first offense) or illegal disposal of garbage, trash, industrial and bulky waste (currently at \$50 for first offense) be significantly increased in order to create a financial deterrent to these violations.

The amendment will have no financial impact on affected departments.

The Administration recommends that the City Commission approve the Ordinance at First Reading.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary: No fiscal impact is anticipated.

City Clerk's Office Legislative Tracking:

Code Compliance Department

Sign-Offs:

Department Director	Assistant City Manager	City Manager
HDC 		JLM 

T:\AGENDA\2015\September\CODE\Commission Summary Solid Waste.docx



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 2, 2015

SUBJECT: Chapter 90 Amendment

FIRST READING

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "SOLID WASTE," BY AMENDING ARTICLE II, ENTITLED "ADMINISTRATION," BY AMENDING SECTION 90-39 THEREOF, ENTITLED "FINE SCHEDULE FOR VIOLATIONS ISSUED AND APPLIED TO OWNERS, AGENTS, TENANTS, OCCUPANTS, OPERATORS OR MANAGERS, OR PERSONS RESPONSIBLE FOR THE VIOLATION," TO AMEND THE FINE SCHEDULES THEREIN; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve the Ordinance at First Reading.

BACKGROUND

This is a request regarding proposed amendments of Chapter 90, Subsection 39 of the City of Miami Beach Code of Ordinances, pertaining to Solid Waste violations. The request is sponsored by Commissioner Deede Weithorn.

Research reflects that some solid waste violations in Chapter 90 of the City of Miami Beach Code have not been amended for a number of years. Thus, the Administration recommends that solid waste fines, which include but are not limited to illegal disposal of biohazardous and/or hazardous waste (currently at \$250 for first offense) or illegal disposal of garbage, trash, industrial and bulky waste (currently at \$50 for first offense) be significantly increased in order to create a financial deterrent to these violations.

FISCAL IMPACT

The amendment will have no financial impact on affected departments.

CONCLUSION

The Administration recommends that the City Commission approve the Ordinance at First Reading.

JLM/HDC/RSA

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "SOLID WASTE," BY AMENDING ARTICLE II, ENTITLED "ADMINISTRATION," BY AMENDING SECTION 90-39 THEREOF, ENTITLED "FINE SCHEDULE FOR VIOLATIONS ISSUED AND APPLIED TO OWNERS, AGENTS, TENANTS, OCCUPANTS, OPERATORS OR MANAGERS, OR PERSONS RESPONSIBLE FOR THE VIOLATION," TO AMEND THE FINE SCHEDULES THEREIN; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City"), because of overriding public health, safety, and welfare considerations, retains regulatory authority over solid waste collection and disposal; and

WHEREAS, the provisions of Chapter 90 of the City Code are intended to ensure that solid waste collection and disposal in the City is efficient and responsive to public complaints, and that the public convenience, aesthetic and environmental considerations, and the public investment in right-of-way property are protected; and

WHEREAS, Section 90-39 sets forth a fine schedule for, among other things, solid waste violations or accumulations of solid waste that create a health hazard, environmental hazard, or nuisance; the illegal disposal of garbage, trash, industrial and bulky waste; the illegal disposal of garden trash, tree, and shrubbery trash and/or special handling trash; and the illegal disposal of biohazardous and/or hazardous waste; and

WHEREAS, Section 90-39 also sets forth fines for the following violations of Chapter 90: the presence of garbage facilities on public property without a permit; open lids on garbage facilities; garbage facilities with insufficient capacity; an insufficient frequency of garbage collection; overloaded garbage facilities; a lack of or deterioration of garbage facilities; and the presence of garbage or miscellaneous trash around garbage facilities; and

WHEREAS, an increase in the fine schedule is necessary to deter future violations and protect the public health, safety, and welfare; and

WHEREAS, the amendments set forth below are necessary to accomplish the above objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Article II of Chapter 90 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 90

SOLID WASTE

* * *

ARTICLE II. ADMINISTRATION

* * *

Sec. 90-39. Fine schedule for violations issued and applied to owners, agents, tenants, occupants, operators or managers, or persons responsible for the violation.

Fine

(a) *Violation(s) of section 90-36: A solid waste violation or accumulation of solid waste that creates a health hazard, environmental hazard or nuisance:*

a. First offense ~~\$100.00~~ \$500.00

b. Second or subsequent offense ~~200.00~~ \$1,000.00

(b) *Violations of sections 90-96, 90-97 and 90-98:*

(1) Garbage facilities on public property without a permit:

a. First offense per garbage facility ~~\$50.00~~ \$100.00

b. Second or subsequent offense per garbage facility ~~100.00~~ \$500.00

*Fine for
failure to
correct in
specified time
after notice*

(2) Dumpsters located and kept on front yard or side yard facing street (corner lots) ~~\$50.00~~ \$100.00

(3) Dumpsters not kept in approved garbage storage facility ~~50.00~~ \$100.00

(4) Owners; occupants; or operator or managers without garbage collection service where required by this chapter (private or city) ~~100.00~~ \$200.00

(5) Individual properties with different ownerships sharing the same service, with or without consent, per owner ~~100.00~~ \$200.00

Fine

(c) *Violations of sections 90-99 and 90-100:*

(1)	Open lid on garbage facility(ies)	\$25.00 <u>\$50.00</u>
(2)	Insufficient garbage facility(ies) capacity	50.00 <u>\$100.00</u>
(3)	Insufficient frequency of garbage collection	50.00 <u>\$100.00</u>
(4)	Overloaded garbage facility(ies)	50.00 <u>\$100.00</u>
(5)	Lack of/or deteriorated garbage facility(ies)	50.00 <u>\$100.00</u>
(6)	Garbage or miscellaneous trash around garbage facility(ies)	50.00 <u>\$100.00</u>

(d) *Violations of sections 90-100—90-105:*

(1)	Illegal disposal of garbage, trash, industrial and bulky waste:	
a.	First offense	\$50.00 <u>\$250.00</u>
b.	Second or subsequent offense	100.00 <u>\$500.00</u>
(2)	Illegal disposal of garden trash, tree and shrubbery trash and/or special handling trash:	
a.	First offense	50.00 <u>\$250.00</u>
b.	Second or subsequent offense	100.00 <u>\$500.00</u>
(3)	Illegal disposal of biohazardous and/or hazardous waste:	
a.	First offense	250.00 <u>\$1,000.00</u>
b.	Second or subsequent offense	1,000.00 <u>\$2,000.00</u>

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2015.

PASSED AND ADOPTED this _____ day of _____, 2015.

ATTEST:

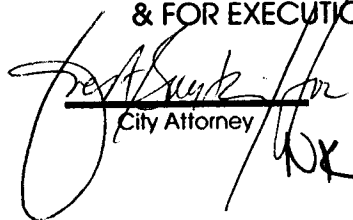
Rafael E. Granado, City Clerk

Philip Levine, Mayor

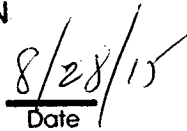
(Sponsored by Commissioner Deede Weithorn)

Underline denotes additions
~~Strike through~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney



Date



MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION
MEMORANDUM

TO: MAYOR PHILIP LEVINE
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JIMMY MORALES

FROM: RAUL J. AGUILA *RJA*
CITY ATTORNEY

DATE: September 2, 2015

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CALLING FOR A NOVEMBER 3, 2015 SPECIAL ELECTION, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH, FLORIDA, A QUESTION ASKING WHETHER THE FLOOR AREA RATIO (FAR) FOR THE "OCEAN TERRACE OVERLAY DISTRICT," WITH AN UNDERLYING ZONING DESIGNATION OF "COMMERCIAL DISTRICT-2" ("CD-2") AND "MIXED USE ENTERTAINMENT DISTRICT" ("MXE"), BE INCREASED FROM A MAXIMUM 2.0 FAR TO A MAXIMUM 3.0 FAR FOR RESIDENTIAL AND HOTEL USES ONLY, AND ALLOW NO FAR INCREASE FOR COMMERCIAL USES; WHICH OCEAN TERRACE OVERLAY DISTRICT IS LOCATED BETWEEN 73RD AND 75TH STREETS, COLLINS AVENUE, AND OCEAN TERRACE?

Pursuant to the request of City Commissioner Joy Malakoff, the attached Resolution has been prepared calling for a City of Miami Beach Special Election to be held on November 3, 2015 for the purpose of submitting to the City's voters the following question:

Shall the Floor Area Ratio (FAR) for the "Ocean Terrace Overlay District," located between 73rd and 75th Streets, Collins Avenue, and Ocean Terrace, which has underlying zoning designation of "Commercial District-2" ("CD-2") and "Mixed Use Entertainment District" ("MXE"), be increased from a maximum of 2.0 FAR to a maximum of 3.0 FAR for residential and hotel uses only, and allow no far increase for commercial uses?

Pursuant to the City Charter Section 1.03(c), the City is required to hold an election and obtain a majority vote of the electorate in order to authorize any increase in the Floor Area Ratio (FAR) of any property. The City is seeking to create the "Ocean Terrace Overlay District," which district is located between 73rd and 75th Streets, Collins Avenue, and Ocean Terrace. The underlying properties are zoned Commercial District 2 (CD-2) and Mixed Use Entertainment (MXE), and currently have a maximum FAR of 2.0. The proposed FAR increase of 1.0, from a maximum FAR of 2.0 to 3.0, would be restricted to residential and hotel uses and could not be utilized for commercial/retail uses.

Finally, pursuant to directive of the Miami-Dade County Elections Department, the final date by which the City may adopt its Resolution placing a ballot measure on the November 3, 2015 ballot is September 4, 2015. Accordingly, this matter is timely presented to the City Commission and adoption of the attached Resolution may take place at today's meeting.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, CALLING FOR A NOVEMBER 3, 2015 SPECIAL ELECTION, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH, FLORIDA, A QUESTION ASKING WHETHER THE FLOOR AREA RATIO (FAR) FOR THE "OCEAN TERRACE OVERLAY DISTRICT," WITH AN UNDERLYING ZONING DESIGNATION OF "COMMERCIAL DISTRICT-2" ("CD-2") AND "MIXED USE ENTERTAINMENT DISTRICT" ("MXE"), BE INCREASED FROM A MAXIMUM 2.0 FAR TO A MAXIMUM 3.0 FAR FOR RESIDENTIAL AND HOTEL USES ONLY, AND ALLOW NO FAR INCREASE FOR COMMERCIAL USES; WHICH OCEAN TERRACE OVERLAY DISTRICT IS LOCATED BETWEEN 73RD AND 75TH STREETS, COLLINS AVENUE, AND OCEAN TERRACE?

WHEREAS, pursuant to Section 1.03(c) of the City Charter, the floor area ration (FAR) of any property within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [November 7, 2001], including any limitation on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach; and

WHEREAS, the City would like to schedule a vote of the electorate for Tuesday, November 3, 2015, in order for the residents of Miami Beach to vote on whether the residential and hotel use FAR for the proposed Ocean Terrace Overlay District should be allowed; and,

WHEREAS, The City desires to place the question on the ballot and call a special election.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH:

SECTION 1. In accordance with provisions of the Charter of the City of Miami Beach, Florida and the general laws of the State of Florida, a Special Election is hereby called and directed to be held in the City of Miami Beach, Florida, from 7:00 a.m. to 7:00 p.m. on Tuesday, November 3, 2015, for the purpose of submitting to the electorate the question as set forth hereinafter.

SECTION 2. That the appropriate and proper Miami-Dade County election officials shall conduct the said Special Election hereby called, with acceptance of the certification of the results of said Special Election to be performed by the City Commission. The official returns for each precinct shall be furnished to the City Clerk of the City of Miami Beach as soon as the ballots from all precincts have been tabulated.

SECTION 3. That the said voting precincts in the City of said Special Election shall be as established by the proper and appropriate Miami-Dade County Election Officials. All electors shall vote at the polling places and the voting precincts as determined by the Miami-Dade County Election Officials as set forth in the attached Exhibit "A".

SECTION 4. Not less than thirty (30) days notice of the adoption of this Resolution and of its provisions calling this Special Election shall be given by publication in the Miami Herald, a newspaper of general circulation in Miami Beach, Miami-Dade County, Florida. Such publication shall be made in accordance with the provisions of Section 100.342, Florida Statutes, and Section 38-3 of the Code of the City of Miami Beach.

SECTION 5. The Notice of Election shall be substantially in the following form:

THE CITY OF MIAMI BEACH, FLORIDA

NOTICE OF SPECIAL ELECTION

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON THE 3RD DAY OF NOVEMBER, 2015, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

**1.0 Maximum FAR Increase for Residential and
Hotel Uses in the Ocean Terrace Overlay District**

Shall the Floor Area Ratio (FAR) for the "Ocean Terrace Overlay District," located between 73rd and 75th Streets, Collins Avenue, and Ocean Terrace, which has underlying zoning designation of "Commercial District-2" ("CD-2") and "Mixed Use Entertainment District" ("MXE"), be increased from a maximum of 2.0 FAR to a maximum of 3.0 FAR for residential and hotel uses only, and allow no far increase for commercial uses?

_____ YES
_____ NO

Said Notice shall further set forth the several polling places in the election precincts as established in accordance with Section 3 hereof, and shall further set forth pertinent information regarding eligibility of electors to participate in said elections.

SECTION 6. That the official ballot to be used in the Special Election to be held on November 3, 2015, hereby called, shall be in substantially the following form, to-wit:

"OFFICIAL BALLOT"

**1.0 Maximum FAR Increase for Residential and
Hotel Uses in the Ocean Terrace Overlay District**

Shall the Floor Area Ratio (FAR) for the "Ocean Terrace Overlay District," located between 73rd and 75th Streets, Collins Avenue, and Ocean Terrace, which has underlying zoning designation of "Commercial District-2" ("CD-2") and "Mixed Use Entertainment District" ("MXE"), be increased from a maximum of 2.0 FAR to a maximum of 3.0 FAR for residential and hotel uses only, and allow no far increase for commercial uses?

_____ **YES**

_____ **NO**

SECTION 7. The form of the ballots to be used in this Special Election and their preparation shall be in compliance with all statutory requirements relating to the use of mechanical or other approved voting machines or devices.

SECTION 8. Registration of persons desiring to vote in the Special Election shall be in accordance with the general law of the State of Florida governing voter registration. Qualified persons may obtain registration forms to vote at the Office of the City Clerk, City Hall, 1700 Convention Center Drive, First Floor, Miami Beach, Florida 33139, during normal business hours, and at such other voter registration centers and during such times as may be provided by the Supervisor of Elections of Miami-Dade County. The Miami-Dade County Supervisor of Elections will register voters for this Special Election until 5:00 p.m. on _____, 2015. All persons eligible to vote at this Special Election must be registered before the time and date set forth herein or have registered previously, as provided by law. Each person desiring to become a registered voter shall be responsible for properly filling out the registration form and returning it to the Miami-Dade County Elections Office. All questions concerning voter registration should be directed to the Miami-Dade County Elections Office, 2700 N.W. 87th Avenue, Doral, Florida 33172; Telephone: (305) 499-VOTE (8683).

SECTION 9. That the absentee voters participating in said Special Election shall be entitled to cast their ballots in accordance with the provisions of the Laws of the State of Florida with respect to absentee voting.

SECTION 10. That the City of Miami Beach shall pay all expenses for conducting this Special Election and will pay to Miami-Dade County or directly to all persons or firms, upon receipt of invoice or statement approved by the Supervisor of Elections of Miami-Dade County, Florida.

SECTION 11. If any section, sentence, clause or phrase of the proposed ballot measure is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of said ballot measure.

SECTION 12. This Resolution shall be effective immediately upon its passage.

PASSED and ADOPTED this _____ day of _____, 2015.

ATTEST:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

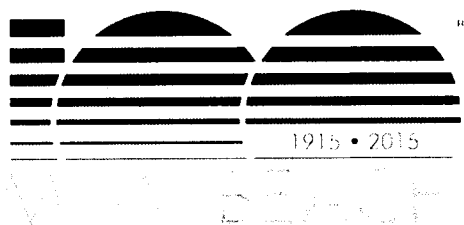
(Requested by City Commissioner Joy Malakoff)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature]
City Attorney

8/27/15
Date

[Signature]



OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

**TO: MAYOR PHILIP LEVINE
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JIMMY MORALES**

FROM: RAUL J. AGUILA *[Signature]*
CITY ATTORNEY

DATE: SEPTEMBER 2, 2015

**SUBJECT: RESOLUTION CALLING NOVEMBER 3, 2015 SPECIAL ELECTION
AMENDMENT TO CITY CODE SECTION 2-459 ENTITLED: "CERTAIN
APPEARANCES PROHIBITED".**

Pursuant to the request of City Commissioner Joy Malakoff, the attached Resolution has been prepared calling for a City of Miami Beach Special Election to be held on November 3, 2015 for the purpose of submitting to the City's voters the following question:

City Code Section 2-459, which prohibits City board members and their associates from lobbying City personnel and agencies, already has an exception allowing lobbying for non-profit entities. Should this Section be amended to include an additional exception allowing Historic Preservation and Design Review Board members who are architects or landscape architects to lobby City personnel and agencies on land development applications, except the board on which they serve and related City staff?

This proposal seeks to amend City Code Section 2-459, in the City's Code of Ethics, by providing for an exception from the prohibition on lobbying by City officials. The exception would be limited to Historic Preservation Board ("HPB") and Design Review Board ("DRB") members who are architects or landscape architects, and would allow those members to lobby City personnel or officials, except for members of the boards on which they serve. Because the proposed exemption would lessen the stringency of City Code Section 2-459, a public vote is required pursuant to City Charter Section 1.05.

Commissioner Malakoff has proposed this ballot measure as part of her envisioned comprehensive legislative reform towards streamlining and otherwise improving the City's development review process. The prohibition on lobbying by all board members set forth in City Code Section 2-459, although laudable in concept, has served to discourage qualified design professionals from serving on the HPB and DRB, as such service prevents them from lobbying the City on behalf of their clients. By amending the Code to allow for a limited exception whereby such architect/landscape architect HPB and DRB members may lobby the City (while maintaining the existing prohibition on lobbying (i) other members of the board on which the HPB or DRB member serves or (ii) related City staff), the City will have a greater opportunity to attract qualified design professionals for such City service.

Finally, pursuant to a directive of the Miami-Dade County Elections Department, the final date by which the City may adopt a Resolution placing a ballot measure on the November 3, 2015 ballot is September 4, 2015. Accordingly, this matter is timely presented to the City Commission and adoption of the attached Resolution may take place at today's meeting.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA CALLING FOR A NOVEMBER 3, 2015 SPECIAL ELECTION, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH, FLORIDA A QUESTION ASKING WHETHER CITY CODE SECTION 2-459 SHOULD BE AMENDED TO INCLUDE AN ADDITIONAL EXCEPTION ALLOWING HISTORIC PRESERVATION AND DESIGN REVIEW BOARD MEMBERS WHO ARE ARCHITECTS OR LANDSCAPE ARCHITECTS TO LOBBY CITY PERSONNEL AND AGENCIES ON LAND DEVELOPMENT APPLICATIONS, EXCEPT THE BOARD ON WHICH THEY SERVE AND RELATED CITY STAFF.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH:

SECTION 1.

In accordance with provisions of the Charter of the City of Miami Beach, Florida and the general laws of the State of Florida, a Special Election is hereby called and directed to be held in the City of Miami Beach, Florida, from 7:00 a.m. to 7:00 p.m. on Tuesday, November 3, 2015, for the purpose of submitting to the electorate the question as set forth hereinafter.

SECTION 2.

That the appropriate and proper Miami-Dade County election officials shall conduct the said Special Election hereby called, with acceptance of the certification of the results of said Special Election to be performed by the City Commission. The official returns for each precinct shall be furnished to the City Clerk of the City of Miami Beach as soon as the ballots from all precincts have been tabulated.

SECTION 3.

That the said voting precincts in the City of Miami Beach of said Special Election shall be as established by the proper and appropriate Miami-Dade County Election Officials. All electors shall vote at the polling places and the voting precincts as determined by the Miami-Dade County Election Officials as set forth in the attached Exhibit "A".¹

¹ As of date, the City of Miami Beach has not received from Miami-Dade County Elections Department the final list of polling places for the City's November 3, 2015 Special Election. Accordingly, attached to this Resolution is a list of polling places from the City's November 2014 Special Election, which upon receipt from the County, will be superseded by the Department of Elections' list of polling places for the City's subject November 3, 2015 Special Election, which list of polling places for the City's November 3, 2015 Special Election will be publicly noticed by the City.

SECTION 4.

Not less than thirty days notice of the adoption of this Resolution and of its provisions calling this Special Election shall be given by publication in the Miami Herald, a newspaper of general circulation in Miami Beach, Miami-Dade County, Florida. Such publication shall be made in accordance with the provisions of Section 100.342, Florida Statutes, and Section 38-3 of the Code of the City of Miami Beach.

SECTION 5.

The Notice of Election shall be substantially in the following form:

THE CITY OF MIAMI BEACH, FLORIDA

NOTICE OF SPECIAL ELECTION

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON THE 3rd DAY OF NOVEMBER, 2015, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

City Code Section 2-459:
Establish Additional Exception to
Prohibition on Lobbying by City Board Members

City Code Section 2-459, which prohibits City board members and their associates from lobbying City personnel and agencies, already has an exception allowing lobbying for non-profit entities. Should this Section be amended to include an additional exception allowing Historic Preservation and Design Review Board members who are architects or landscape architects to lobby City personnel and agencies on land development applications, except the board on which they serve and related City staff?

_____ YES
_____ NO

Said Notice shall further set forth the several polling places in the election precincts as established in accordance with Section 3 hereof, and shall further set forth pertinent information regarding eligibility of electors to participate in said election.

SECTION 6.

That the official ballot to be used in the Special Election to be held on November 3, 2015, hereby called, shall be in substantially the following form, to-wit:

“OFFICIAL BALLOT”

City Code Section 2-459: **Establish Additional Exception to** **Prohibition on Lobbying by City Board Members**

City Code Section 2-459, which prohibits City board members and their associates from lobbying City personnel and agencies, already has an exception allowing lobbying for non-profit entities. Should this Section be amended to include an additional exception allowing Historic Preservation and Design Review Board members who are architects or landscape architects to lobby City personnel and agencies on land development applications, except the board on which they serve and related City staff?

_____ YES
_____ NO

SECTION 7.

The form of the ballots to be used in this Special Election and their preparation shall be in compliance with all statutory requirements relating to the use of mechanical or other approved voting machines or devices.

SECTION 8.

Registration of persons desiring to vote in the Special Election shall be in accordance with the general law of the State of Florida governing voter registration. Qualified persons may obtain registration forms to vote at the Office of the City Clerk, City Hall, 1700 Convention Center Drive, First Floor, Miami Beach, Florida 33139, during normal business hours, and at such other voter registration centers and during such times as may be provided by the Supervisor of Elections of Miami-Dade County. The Miami-Dade County Supervisor of Elections will register voters for this Special Election until 5:00 p.m. on October 5, 2015. All persons eligible to vote at this Special Election must be registered before the time and date set forth herein or have registered previously, as provided by law. Each person desiring to become a registered voter shall be responsible for properly filling out the registration form and returning it to the Miami-Dade County Elections Office. All questions concerning voter registration should be directed to the Miami-Dade County Elections Office, 2700 N.W. 87th Avenue, Doral, Florida 33172; Telephone: (305) 499-VOTE (8683).

SECTION 9.

That the absentee voters participating in said Special Election shall be entitled to cast their ballots in accordance with the provisions of the Laws of the State of Florida with respect to absentee voting.

SECTION 10.

That the City of Miami Beach shall pay all expenses for conducting this Special Election and will pay to Miami-Dade County or directly to all persons or firms, upon receipt of invoice or statement approved by the Supervisor of Elections of Miami-Dade County, Florida.

SECTION 11.

If any section, sentence, clause or phrase of the ballot measure set forth above in this Resolution is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of said ballot measure.

SECTION 12.

This Resolution shall be effective immediately upon its passage.

PASSED and ADOPTED this _____ day of _____, 2015.

ATTEST:

Philip Levine
Mayor

Rafael E. Granado
City Clerk

(Sponsored by City Commissioner Joy Malakoff)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Rafael E. Granado 8/27/15
City Attorney Date
NK

CITY CODE SECTION 2-459:
PROPOSED BALLOT QUESTION AND AMENDED CITY CODE TEXT
NOVEMBER 3, 2015 SPECIAL ELECTION

I. PROPOSED BALLOT QUESTION:

City Code Section 2-459:
Establish Additional Exception to
Prohibition on Lobbying by City Board Members

City Code Section 2-459, which prohibits City board members and their associates from lobbying City personnel and agencies, already has an exception allowing lobbying for non-profit entities. Should this Section be amended to include an additional exception allowing Historic Preservation and Design Review Board members who are architects or landscape architects to lobby City personnel and agencies on land development applications, except the board on which they serve and related City staff?

_____ YES
_____ NO

II. PROPOSED CITY CODE TEXT:

City of Miami Beach Code section 2-459. "Certain appearances prohibited."

(a) No member of a city board, agency or committee or a member of any board, agency or committee created hereafter which is designated as a board, agency or committee subject to the purview of this section shall:

(1) Either directly or through an associate, appear, represent or act on behalf of a third person before the city commission or any city agency with respect to any agency action sought by the third person.

(2) Either directly or through an associate be engaged as a lobbyist for and on behalf of a third person with respect to any official action by any public officer sought by such third person.

(b) Definitions. As used in this section, the following definitions shall apply:

Agency means any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

Associate means any person or entity engaged in or carrying on a business enterprise with a city agency member as a partner, joint venturer, or co-corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange or co-owner of property. Associate shall further include a business affiliation with a city agency member where an "employee" or "of counsel" relationship exists.

Lobbyist means all persons, firms, or corporations employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat, or modification(s) of any of the following: (1) ordinance, resolution, action or decision of any commissioner; (2) any action, decision, or recommendation of any city board or committee; or (3) any action, decision or recommendation of the city manager, deputy city manager, assistant city managers, all department heads, all division heads, city attorney, chief deputy city attorney, deputy city attorneys, and/or all assistant city attorneys (except when such personnel are acting in connection with administrative hearings) during the time period of the entire decision-making

process on such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission or a city agency. "Lobbyist," as defined above, specifically includes the principal, as described above, as well as any agent, attorney, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, attorney, officer or employee.

(1) For purposes of this section, and with limited applicability to those agencies that are not standing in nature, "lobbyist" shall exclude any person who only appears as a representative of a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

(2) For purposes of this section, and with limited applicability to those agencies that are standing in nature:

a. Lobbying by a board, agency or committee member shall be permitted when such person is affiliated with a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) in a capacity other than as a managerial employee and appears as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

b. Lobbying by the associate of a board, agency or committee member shall be permitted:

(i) When a board, agency or committee member is affiliated with a not for profit corporation or entity in a capacity other than as a managerial employee, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.

(ii) When a board, agency or committee member is a managerial employee of a not for profit corporation or entity, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item and is affiliated with said not for profit corporation or entity in a capacity other than as a managerial employee.

c. The term "managerial employee" shall mean any employee of a nonprofit corporation or entity who has supervision and operational responsibilities/control of all or some departments of said entity.

(3) For purposes of this section, and with limited applicability to Historic Preservation Board and/or Design Review Board members who are architects or landscape architects, lobbying activities set forth in (a)(1) and (2) above shall be permitted with regard to land development applications, insofar as said activities are restricted to City personnel and City agencies other than the agency (i.e., Historic Preservation Board or Design Review Board) on which the subject Board member serves and related City personnel serve in their capacity as staff to such agency. This subsection shall not prohibit such architects or landscape architects serving on the Historic Preservation Board and/or Design Review Board from submitting plans to their board of membership on behalf of an applicant, so long as any such member also makes known at meetings of such board his or her representation of the applicant and disqualifies himself or herself from speaking or voting or otherwise participating in the review or approval of such application.

Public officer means any person elected or appointed to hold office in the city, as a member of an agency which shall include an advisory body.

Condensed Title:

A Resolution Approving And Authorizing The Mayor And City Clerk To Execute A Settlement Agreement Between The City (Owner), Pky Lincoln Place, LLC (Tenant), And 16th Street Partners, LLC (Master Subtenant), Relating To That Certain Agreement Of Lease (Ground Lease), Dated September 1, 1999, For The Lincoln Place Garage, Located At 1601 Washington Avenue.

Key Intended Outcome Supported:

Ensure Expenditure Trends Are Sustainable Over The Long Term

Item Summary/Recommendation:

On June 23, 1999, the City Commission adopted Resolution No. 99-23222 approving the development agreement with 16th Street Partners, LLC, a Florida limited liability company, to create a mixed use project on land leased from the City located at Washington Avenue and 16th Street (the Project). The Project is an eight story, high rise building with approximately 134,135 rentable square feet of office space, 28,483 rentable square feet of retail space and a 493 space parking garage (Garage).

Effective May 25, 2006, 16th Street Partners, LLC entered into a sales leaseback agreement (Master Sublease) with TAG Lincoln Place LLC (TAG) (until TAG transferred/sold its 100% ownership in the property to PKY Lincoln Place Holdings, LLC, in December 2013. Thereafter, TAG changed its name to PKY Lincoln Place, LLC (PKY or Tenant). Under said land lease, the City is entitled to receive base rent of \$29,020.27/month or \$348,243.24 annually (includes 7% state sales tax) plus 2.5 per cent of the gross Project Revenues from the income of the Project.

Under the Master Sublease, PKY, as successor tenant/Master Sublandlord, leases the entire Project to 16th Street and 16th Street is responsible for the payment of all obligations of PKY to the City. There is no sublease or other occupancy agreement between 16th Street and its affiliates for the use of office space in the building or parking spaces in the Garage (collectively referred to herein as 16th Street's Exclusive Spaces), and 16th Street does not impose or collect any rent for such use.

In 2013, the City's Leasing Specialist, tasked with monitoring this lease agreement, became concerned that the tenant was not remitting 2.5% of all their applicable revenues (Percentage Rent) to the City as she believed that they were incorrectly excluding rents paid by their parent company (LNR 16th Street, LLC) which occupied a majority of Lincoln Place's office space. As a result, Internal Audit was requested to review the documentation provided and to determine the validity of these concerns. In addition to subsequently confirming the omission of parental company rents, Internal Audit also noted that the tenant was not remitting sufficient percentage rent payments on the parking garage revenues and common area maintenance charges. Thereafter, the parties reached a Settlement Agreement.

SETTLEMENT AGREEMENT

(i) a settlement payment from 16th Street to the City for the outstanding claims prior to 2014, in the sum of \$400,000.00, and mutual release, (ii) an agreed upon construction of the Percentage Rent provisions of the Ground Lease as they shall apply to 16th Street and its affiliates for the period January 1, 2014 through the duration of the Master Lease Term; (iii) an agreement between the City and PKY as to reasonable conditions for approval by the City of a future Master Sublease; (iv) acknowledgement the actual number of parking spaces in the Garage is four hundred and ninety-three (493), and (v) solely during the term of the Master Lease, the Owner agrees to (1) abate the enforcement of this provision contained in Section 6.1 of the Ground Lease; (2) permit the reallocation of the total number of public parking spaces that must be available to the general public on weekdays from 7:00 A.M. to 6:30 P.M. (Office Hours) from 100 to 20 spaces; and (3) increase the number of public parking after Office Hours on weekdays and at all times during weekends, to 300 spaces.

Advisory Board Recommendation:

It is recommended that the City adopt the proposed resolution.

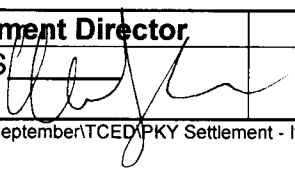
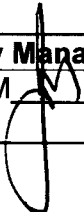
Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
OBPI	Total		

Financial Impact Summary:**City Clerk's Office Legislative Tracking:**

Max A. Sklar, Tourism, Culture and Economic Development Director

Sign-Offs:

Department Director	ACM/CFO	City Manager
MAS 	KGB 	JLM 

T:\AGENDA\2015\September\TCED\PKY Settlement - Item Summary.docx



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Honorable Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 2, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN THE CITY (OWNER), PKY LINCOLN PLACE, LLC (TENANT), AND 16TH STREET PARTNERS, LLC (MASTER SUBTENANT), RELATING TO THAT CERTAIN AGREEMENT OF LEASE (GROUND LEASE), DATED SEPTEMBER 1, 1999, FOR THE LINCOLN PLACE GARAGE, LOCATED AT 1601 WASHINGTON AVENUE.**

RECOMMENDATION

Adopt the Resolution.

BACKGROUND

Pursuant to RFP 20-97/98, which sought proposals for the development of public-private parking facilities, on June 23, 1999, the City Commission adopted Resolution No. 99-23222 approving the development agreement with 16th Street Partners, LLC, a Florida limited liability company (16th Street), to create a mixed use project on land leased from the City located at Washington Avenue and 16th Street (Lincoln Place or the Project). Once constructed, Lincoln Place became an eight story, high rise building with approximately 134,135 rentable square feet of office space, 28,483 rentable square feet of retail space and a 493 space parking garage (Garage).

16th Street was originally formed by LNR 16th Street, Inc. in partnership with Lincoln Place Partners, LLC and Comras 16th Street, Inc. Effective May 25, 2006, 16th Street Partners, LLC entered into a sales leaseback agreement (Master Sublease), having a term of fifteen years with TAG Lincoln Place LLC, a Delaware limited liability company (tenant), a wholly owned subsidiary of The Andalex Group, LLC, a Delaware limited liability company, which remained relatively unchanged until TAG transferred/sold their 100% ownership in the property to PKY Lincoln Place Holdings, LLC, a Delaware limited liability company, in December 2013. Thereafter, TAG Lincoln Place LLC changed its name to PKY Lincoln Place, LLC (PKY or Tenant).

In connection with the development of the Project, 16th Street, as tenant, and the City (Owner) executed a ground lease (Ground Lease), in effect from September 1, 1999 through November 2052, with two (2) 20 year extension options, and which included among other items the following lease payment terms:

- The Tenant shall pay the base rent in monthly installments equal to one-twelfth of the then applicable annual rent payable in advance on the first day of each calendar

month.

- The base rent will be \$250,000 for lease years 1 through 5 (September 1, 2002 through December 31, 2007) increasing to \$300,000 for lease years 6 through 10 (January 1, 2008 through December 31, 2012). Adjusting these base rent payments for 7% state sales tax, the tenant was to remit \$26,750 (\$300,000 x 1.07 state sales tax)/12 months) from the beginning of the audit period (January 1, 2009) through December 31, 2012.
- The monthly base rent was to be adjusted on every fifth lease year thereafter based upon the lesser of 12% or the cumulative CPI over the previous five year period. It was subsequently determined that the cumulative CPI grew by less than the 12% during the preceding five years resulting in the tenant's monthly base rent payments increasing to \$29,020.27 or \$348,243.24 annually (includes 7% state sales tax) starting in January 2013.
- The tenant shall also pay the City annual percentage rent for each lease year during the term in an amount equal to 2.5% of the amount of Project Revenue.

The following table lists the rounded amount of base and percentage rent revenues received from the tenant for each calendar year from 2009:

	2009	2010	2011	2012	2013	Total
Base Rent *	\$321,000	\$321,000	\$321,000	\$321,000	\$348,243	\$1,632,243
Percentage Rent *	\$48,480	\$52,191	\$48,832	\$48,172	\$51,626	\$249,301
Total Rent	\$369,480	\$373,191	\$369,832	\$369,172	\$399,869	\$1,881,544

- * The above figures represent the month and/or year that the tenant made the payment for while the City recognized the payment in the fiscal year that it was received so differences would exist if this table was reconciled to the City's Financial System entries. For example, the \$48,480 percentage rent payment for the 2009 calendar year was actually received on June 3, 2010 and was included in the 2009/10 fiscal year entries.

In 2013, the City's Leasing Specialist tasked with monitoring this Ground Lease became concerned that the tenant was not remitting 2.5% of all their applicable revenues to the City as she believed that 16th Street was incorrectly excluding rents paid by 16th Street's affiliated company (LNR 16th Street, LLC) which occupied a majority of Lincoln Place's office space. As a result, Internal Audit was requested to review the documentation provided and to determine the validity of these concerns. In addition to subsequently confirming the omission of rents from 16th Street's affiliates, Internal Audit also noted that 16th Street was not remitting sufficient Percentage Rent payments on the parking garage revenues and common area maintenance charges.

PKY, as successor tenant/Master Sublandlord, leases the entire Project to 16th Street pursuant to a Master Sublease, and pursuant to the terms of the Master Sublease, 16th Street agreed to be responsible for the payment of all obligations of PKY to the City (as defined in the Ground Lease) under the Ground Lease. There is no sublease or other occupancy agreement between 16th Street and its affiliates for the use of office space in the building or parking spaces in the Garage (collectively referred to herein as 16th Street's Exclusive Spaces), and 16th Street does not impose or collect any rent or other charges for such use.

The City claims that unpaid Percentage Rent (as defined in the Ground Lease) has accrued

and remains due and payable to the City by virtue of the use by 16th Street and its affiliates of 16th Street's Exclusive Spaces at the Project for the period prior to January 1, 2014, which claims are disputed and denied by 16th Street. Additionally, the Ground Lease does not accurately reflect the actual number of parking spaces in the Garage.

In connection with negotiating the terms of the settlement, in light of the fact that 16th Street's Exclusive Spaces were not being rented at market rates, the Director of Tourism, Culture and Economic Development secured a Fair Market Rental Analysis, a copy of which is attached hereto and incorporated herein as Exhibit B. The parties reached an agreement with respect (i) to a settlement payment from 16th Street to the City in consideration of a settlement of the dispute and a full and final release of the outstanding claims, (ii) an agreed upon construction of the Percentage Rent provisions of the Ground Lease as they shall apply to 16th Street and its affiliates for the period January 1, 2014 through the duration of the Master Lease Term (as defined in Section 4 of the Agreement); (iii) an agreement between the City and PKY as to reasonable conditions for approval by the City of a future Master Sublease; and (iii) certain agreements regarding the Garage through the duration of the Master Lease term.

SETTLEMENT AGREEMENT

A copy of the Settlement Agreement is attached hereto and incorporated herein by reference as Exhibit "A". A summary of those items is as follows:

1. **Settlement of Outstanding Claims and Mutual Release:** In resolution of the Dispute and in consideration of a full and final settlement of the Outstanding Claims, 16th Street will pay to the City the sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00) (the "**Settlement Payment**"), the parties agree to mutually release each other from any and all claims or liability, past, present or future, of whatsoever kind or character, by reason of or arising out of or existing in connection with the Dispute or the Outstanding Claims.
2. **Base Rent Fair Market Rental Value:** For purposes of determining an implied Project Revenue for office space occupied by 16th Street or its affiliates at the Project, the parties agree that the base rent fair market rental value (including operating expenses for the 2006 base year operating expenses for all office space tenants at the Project) shall be deemed to be \$30.41 per rentable square foot effective January 1, 2014, which shall escalate annually at the rate of three percent (3%) on January 1st of each year thereafter for the duration of the Master Lease Term. Simultaneously with the execution of the Settlement Agreement, 16th Street shall reimburse the Owner for the cost of the appraisal utilized to determine the base rent fair market rental value, for the year 2014, in the amount of \$3,000.00.
3. **Reimbursement of Operating Expenses:** For purposes of determining an implied Project Revenue for reimbursable operating expenses, applicable to the office space occupied by 16th Street or its affiliates at the Project ("**16th Street Reimbursable Expenses**"), for the period from January 1, 2014 through the end of the Master Lease Term, the parties agree that said operating expenses which are subject to reimbursement from third-party office tenants ("**Office Reimbursable Expenses**") for the applicable Lease Year at the Project (calculated in a manner consistent with the Office Reimbursable Expenses for prior Lease Years at the Project, based upon the 95% grossed-up operating expenses passed through to the other office tenants for the applicable Lease Year, the actual insurance expenses paid during the applicable Lease Year, and the actual real estate tax bills paid for the applicable Lease Year,

copies of which have been furnished to the City), shall be used as the basis for determining implied Project Revenue as well as Percentage Rent due under the Ground Lease for the office space occupied by 16th Street or its affiliates at the Project to the extent that any of the categories of the Office Reimbursable Expenses exceeds the operating expenses for the 2006 base year.

4. Parking Spaces: For purposes of determining an implied Project Revenue and calculating Percentage Rent thereon for parking spaces actually used by 16th Street or its affiliates at the Garage, the parties agree that the fair market value shall be deemed to be \$107.00 per space, per month, commencing on January 1, 2014, and for the duration of the Master Lease Term.
5. Percentage Rent Payment/Additional Documentation: Effective as of the 2015 calendar year, through the end of the Master Lease Term, solely, the process for submitting the Percentage Rent payment, as required under Section 3.3(b) of the Ground Lease, shall be modified as follows:

16th Street Partners shall submit an estimated Percentage Rent payment, along with the back-up information, within sixty (60) days from the end of each Lease Year, subject to finalizing the audited financial statement for said particular Lease Year, with the adjusted/final payment due within one hundred fifty (150) days from the end of each Lease Year. As long as 16th Street follows this modified procedure, no penalties shall accrue to PKY under the Ground Lease.

16th Street agrees, for the duration of the Master Lease Term, to include, along with the audited financial statement and each final payment of Percentage Rent (including Percentage Rent from the lease of space to third parties and other parking revenue in accordance with the provisions of the Ground Lease), shall provide the following:

- a report, with updated floor plans, to the City of the total square feet of space in the Project actually occupied and used by 16th Street or its affiliates during the prior Lease Year (which City may verify through a site visit);
- the actual Third Party Reimbursable Expenses and the 16th Street Reimbursable Expenses, as well as the corresponding reconciliations for said expenses for the prior Lease Year;
- the number of monthly parking passes or access cards issued to and actually used by employees of 16th Street and its affiliates;
- a copy of the insurance bill(s) paid and covering the prior Lease Year; and,
- proof of payment of real estate taxes paid and covering the prior Lease Year.

6. Agreement Regarding Parking Garage Provisions.

(a) Recognition of Number of Parking Spaces as Constructed in the Garage: The parties recognize that the Ground Lease provides that the Garage shall contain a minimum number of six hundred (600) parking spaces. The parties acknowledge, however, that the actual number of parking spaces in the Garage is four hundred and ninety-three (493).

(b) Temporary Abatement of Enforcement of the Public Parking Requirements: The parties acknowledge that Section 6.1(b) of the Ground Lease requires 100 public parking spaces in the Garage to be made available at all times for use by the general public, and that said provision under the Ground Lease is not being modified. 16th Street has represented that this restriction impairs its ability to lease space to Tenants of the Project, and that the demand for public parking is greater during periods after regular office hours on weekdays and all times during weekends. The parties consider it in the best interests of the Project and the Owner to abate enforcement of this public parking requirement in the Garage, on a temporary basis. Soley during the term of the Master Lease, the Owner agrees to (i) abate the enforcement of this provision contained in Section 6.1(b) of the Ground Lease; (ii) permit the reallocation of the total number of public parking spaces that must be available to the general public on weekdays from 7:00 A.M. to 6:30 P.M. (Office Hours) from 100 to 20 spaces; and (iii) increase the number of public parking that must be available for use by members of the general public, after Office Hours on weekdays and at all times during weekends, to 300 spaces. This temporary abatement of enforcement of the public parking requirement shall not affect the requirement to maintain ten (10) parking spaces for monthly parking for members of the general public.

7. Future Master Sublease Approvals: Pursuant to Section 3.3 of the Ground Lease, the City is entitled to receive Percentage Rent on the basis of Project Revenue derived from operation of the Project by the "Tenant" thereunder, or by the "Master Subtenant" under a Master Sublease of all or substantially all of the Project or of twenty percent (20%) or more of the Garage to a single tenant. The parties acknowledge that under circumstances in which the Master Subtenant and/or its related entities occupy space in the Project for no rental or at a rental rate substantially below market rental rates then in effect (an "Under-market Sublease"), Project Revenue may be adversely affected. As such, in connection with the approval of a proposed Master Sublease, and to the extent the City has approval rights over any proposed "Master Sublease" (as such term is defined in Section 10.2(f), of the Ground Lease) pursuant to the Ground Lease, and in addition to any other documents which City may be entitled pursuant to the terms of the Ground Lease, Tenant shall provide the City with the following documents, in connection with the approval of such proposed Master Sublease: (1) a copy of the Master Sublease; (2) the Master Subtenant's business plan (including proposed market rental value for the spaces under said Master Sublease; proposed operating expenses for the spaces under said Master Sublease; and proposed market rental values for parking spaces in the Garage which may be the subject of said Master Sublease); (3) an acknowledgment from the Master Subtenant, as to whether or not any of the spaces, which are the subject of said Master Sublease, will be occupied by the Master Subtenant or its related entity for its exclusive use; and (4) Master Subtenant's financial statements.

16th Street, in good faith, has paid the 2014 Percentage Rent, in the amount of \$140,410.31, which includes the implied Project Revenue for 16th Street's Exclusive Spaces, based upon the terms of the Settlement Agreement, contingent upon approval of said Settlement Agreement by the City Commission.

CONCLUSION

The Administration recommends that the City Commission adopt the resolution approving and authorizing the Mayor and City Clerk to execute the settlement agreement, as being in the best

PKY Lincoln Place Settlement Agreement
City Commission Meeting
September 2, 2015
Page 6 of 6

interest of the City.

JLM/KGB:MAS

T:\AGENDA\2015\September\TCED\PKY Settlement Agreement MEM.doc

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN THE CITY (OWNER), PKY LINCOLN PLACE, LLC (TENANT), AND 16TH STREET PARTNERS, LLC (MASTER SUBTENANT), RELATING TO THAT CERTAIN AGREEMENT OF LEASE (GROUND LEASE), DATED SEPTEMBER 1, 1999, FOR THE LINCOLN PLACE GARAGE, LOCATED AT 1601 WASHINGTON AVENUE.

WHEREAS, on June 23, 1999, the City Commission adopted Resolution No. 99-23222 approving the development agreement with 16th Street Partners, LLC, a Florida limited liability company (16th Street), to create a mixed use project on land leased from the City located at Washington Avenue and 16th Street (the Project); and

WHEREAS, in connection with said development agreement, on or about September 1, 1999, the City and 16th Street executed a ground lease (Ground Lease); and

WHEREAS, the Project was constructed as an eight story, high rise building with approximately 134,135 rentable square feet of office space, 28,483 rentable square feet of retail space and a 493 space parking garage (Garage); and

WHEREAS, Effective May 25, 2006, 16th Street entered into a sales leaseback agreement (Master Sublease) with TAG Lincoln Place LLC, a Delaware limited liability company (TAG), a wholly owned subsidiary of The Andalex Group, LLC, a Delaware limited liability company, which remained relatively unchanged until TAG transferred/sold its 100% ownership in the Project to PKY Lincoln Place Holdings, LLC, a Delaware limited liability company, in December 2013. Thereafter, TAG changed its name to PKY Lincoln Place, LLC (PKY or Tenant); and

WHEREAS, PKY, as successor tenant/Master Sublandlord, leases the entire Project to 16th Street pursuant to a Master Sublease, and pursuant to the terms of the Master Lease, 16th Street agreed to be responsible for the payment of all obligations of PKY to the City under the Ground Lease; and

WHEREAS, 16th Street and its affiliate, LNR 16th Street, LLC, occupied the majority of the Project's office space and the parking spaces in the Garage (16th Street's Exclusive Spaces); however, there was no sublease or other occupancy agreement between 16th Street and its affiliates for the use of 16th Street's Exclusive Spaces, and 16th Street does not impose or collect any rent or other charges for such use; and

WHEREAS, pursuant to said Ground Lease, the City is entitled to receive base rent, on a monthly basis, which escalates every five years, plus an annual payment of percentage rent, based upon 2.5% of the gross revenues generated by the Project for the particular Leas Year (Percentage Rent); and

WHEREAS, in 2013, the City's Leasing Specialist tasked with monitoring this lease agreement became concerned that the tenant was not remitting the correct amount of Percentage Rent to the City, as she believed that they were incorrectly excluding rents from 16th Street and its affiliate in connection for the use of the office space; and

WHEREAS, as a result, Internal Audit was requested to review the documentation provided and to determine the validity of these concerns. In addition to subsequently confirming the omission of Percentage Rent based upon the use of the office space by 16th Street and its affiliate, Internal Audit also noted that the tenant was not remitting sufficient Percentage Rent payments on the parking garage revenues and common area maintenance charges (the Dispute); and

WHEREAS, the parties resolved the Dispute, based upon the following essential terms: (i) a settlement payment from 16th Street to the City in consideration of a settlement of the dispute and a full and final release of the outstanding claims prior to 2014, in the sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00), (ii) an agreed upon construction of the Percentage Rent provisions of the Ground Lease as they shall apply to 16th Street and its affiliates for the period January 1, 2014 through the duration of the Master Lease term; (iii) an agreement between the City and PKY as to reasonable conditions for approval by the City of a future Master Sublease; (iv) acknowledgement the actual number of parking spaces in the Garage is four hundred and ninety-three (493), and (v) solely during the term of the Master Lease, the City agrees to (1) abate the enforcement of this provision contained in Section 6.1(b) of the Ground Lease; (2) permit the reallocation of the total number of public parking spaces that must be available to the general public on weekdays from 7:00 A.M. to 6:30 P.M. (Office Hours) from 100 to 20 spaces; and (3) increase the number of public parking that must be available for use by members of the general public, after Office Hours on weekdays and at all times during weekends, to 300 spaces.

WHEREAS, the Administration recommends that the City execute the Settlement Agreement, attached hereto and incorporated herein by reference as Exhibit A.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby a resolution of the Mayor and City Commission of the City of Miami Beach, Florida, approving and authorizing the Mayor and City Clerk to execute a settlement agreement, in the form attached hereto and incorporated herein by reference as Exhibit A, between the City (Owner), PKY Lincoln Place, LLC (Tenant), and 16th Street Partners, LLC (Master Subtenant), relating to that certain Agreement of Lease (Ground Lease), dated September 1, 1999, for the Lincoln Place Garage, located at 1601 Washington Avenue.

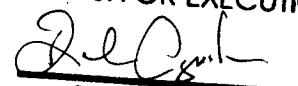
PASSED AND ADOPTED this ____ day of _____, 2015.

ATTEST:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

8-26-15

Date

SETTLEMENT AGREEMENT

PARTIES:

THIS SETTLEMENT AGREEMENT (this "Agreement") is made this _____ day of _____, 2015 ("Effective Date"), by, between and among the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation (the "City" or "Owner"), PKY LINCOLN PLACE, LLC, a Delaware limited liability company ("PKY"), and 16TH STREET PARTNERS, LLC, a Florida limited liability company ("16th Street").

RECITALS:

WHEREAS, the City is the fee simple owner of the land (the "Premises") underlying the improvements, consisting of a mixed-use project containing a parking garage, office space, and retail and/or commercial space (the "Project") presently known as Lincoln Place, having an address of 1601 Washington Avenue, Miami Beach, Florida; and

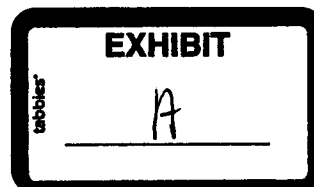
WHEREAS, the City leases the Premises to PKY pursuant to that certain Agreement of Lease dated as of September 1, 1999, and recorded in Official Records Book 18770, Page 46, of the Public Records of Miami-Dade County, Florida (the "Public Records"), as modified by that certain First Amendment to Agreement of Lease dated as of November 8, 2000, and recorded in Official Records Book 19395, Page 1106, of the Public Records (as amended, the "Ground Lease"), as assigned to TAG Lincoln Pace LLC ("TAG") pursuant to an Assignment and Assumption of Lessee's Interest in Lease dated May 24, 2006, and recorded in Official Records Book 24598, Page 2948, of the Public Records; and further assigned to PKY, through the sale of the 100% ownership interest in TAG to PKY Lincoln Place Holdings, LLC, a Delaware limited liability company, pursuant to an Assignment of Membership Interest, dated as of December 6, 2013, and the subsequent name change of TAG to PKY Lincoln Place, LLC.; and

WHEREAS, PKY leases the entire Project to 16th Street pursuant to that certain Master Sublease, titled Lease Agreement, dated March 25, 2006 (the "Master Lease") a short form of which is recorded as a Memorandum of Lease, dated May 25, 2006, and recorded in Official Records Book 24598, Page 3094, of the Public Records (the "Memorandum of Lease"); and

WHEREAS, pursuant to the terms of the Master Lease, 16th Street agreed to be responsible for the payment of all obligations of PKY to the Owner (as defined in the Ground Lease) under the Ground Lease; and

WHEREAS, there is no sublease or other occupancy agreement between 16th Street and its affiliates for the use of office space in the building or parking spaces in the Garage, and 16th Street does not impose or collect any rent or other charges for such use; and

WHEREAS, the Owner claims that unpaid Percentage Rent (as defined in the Ground Lease) has accrued and remains due and payable to the Owner by virtue of the use by 16th Street and its affiliates of a portion of the office space in the building and parking spaces in the Garage at the Project (collectively, "16th Street's Exclusive Spaces") for the



period prior to January 1, 2014 (the "Outstanding Claims"), which claims are disputed and denied by 16th Street (the "Dispute"); and

WHEREAS, the Ground Lease does not accurately reflect the actual number of parking spaces in the Garage, and the parties recognize and agree that it is in the best interests of the Project and the Owner to reallocate the minimum public parking requirements currently set forth under the Ground Lease, exclusively during the duration of the Master Lease Term (as defined in Section 4 of this Agreement); and

WHEREAS, upon the terms and conditions set forth below, the parties have agreed (i) to a settlement payment from 16th Street to the Owner in consideration of a settlement of the Dispute and a full and final release of the Outstanding Claims, (ii) an agreed upon construction of the Percentage Rent provisions of the Ground Lease as they shall apply to 16th Street's Exclusive Spaces for the period commencing on January 1, 2014 through the duration of the Master Lease Term; (iii) an agreement between the Owner and PKY as to reasonable conditions for approval by the Owner of a future Master Sublease; and (iii) certain agreements regarding the Garage through the duration of the Master Lease Term.

TERMS AND CONDITIONS:

NOW, THEREFORE, in consideration of the above recitals and the promises, agreements and releases contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals Incorporated; Definitions. The above recitals are incorporated herein by reference. Unless otherwise defined herein, defined terms (as indicated by an initial capital letter) shall have the meaning ascribed to them in the Ground Lease.

2. City Commission Approval Contingency. The parties hereto understand and agree that this Agreement will not be binding upon the parties to this Agreement until such time as the City Commission of the City of Miami Beach has approved same, and the Agreement is fully executed by the parties to the Agreement. City Commission approval is a material condition precedent to the execution and enforceability of this Agreement, without which the City does not agree to and is not subject to the terms and conditions contained herein.

3. Settlement of Outstanding Claims and Mutual Release. In resolution of the Dispute and in consideration of a full and final settlement of the Outstanding Claims, contemporaneously upon full execution of this Settlement Agreement, 16th Street has paid to the City the sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00) (the "Settlement Payment"), and the Owner accepts the Settlement Payment in full and final satisfaction of the Outstanding Claims. Additionally, each and all of the parties to this Agreement, and the parent companies, subsidiaries, divisions, affiliates, owners, officers, directors, agents, commissioners, employees, subcontractors, representatives, successor and assigns of each and all of them are released from any and all claims of liability, past, present or futures, of whatsoever kind or character, by reason of or arising out of or existing in connection with the Dispute or the Outstanding Claims.

4. Agreed-Upon Construction of Percentage Rent Provisions. The parties have agreed upon the interpretation of the Percentage Rent provisions of the Ground Lease (including the definition of "Project Revenue") as they relate to the use and occupancy of 16th Street's Exclusive Spaces for the period commencing on January 1, 2014, and terminating on June 30, 2021 (the expiration of the current term of the Master Lease), or any earlier termination of the Master Lease (the "Master Lease Term") as hereinafter set forth. The parties acknowledge and agree that the interpretations set forth herein shall not be used to interpret, nor shall they modify the Percentage Rent provisions of the Ground Lease as they apply to any other Tenant (including the definition of Project Revenue), or to any future Master Subtenant of the Project.

(a) Base Rent Fair Market Rental Value. For purposes of determining an implied Project Revenue for office space occupied by 16th Street or its affiliates at the Project, the parties agree that the base rent fair market rental value (including operating expenses for the 2006 base year operating expenses for all office space tenants at the Project) shall be deemed to be \$30.41 per rentable square foot effective January 1, 2014, which shall escalate annually at the rate of three percent (3%) on January 1st of each year thereafter for the duration of the Master Lease Term. Simultaneously with the execution of this Agreement, 16th Street shall reimburse the Owner for the cost of the appraisal utilized to determine the base rent fair market rental value, for the year 2014, in the amount of \$3,000.00.

Example:

By way of illustration of the foregoing, and utilizing the fair market annual base rental for the 2017 calendar year, in the amount of \$33.23 per rentable square foot, and assuming for purposes of example that 16th Street and its affiliates actually occupy and use 90,000 square feet of office space in the Project during such year, the implied Project Revenue and Percentage Rent attributable to 16th Street and its affiliates' occupancy would be as follows:

Base Rent Per Square Foot Per Year	Square Feet of Space Occupied	Implied Project Revenue Per Year	Percentage Rent (2.5%)
\$33.23	90,000	\$2,990,700.00	\$74,767.50

(b) Reimbursement of Operating Expenses. For purposes of determining an implied Project Revenue for reimbursable operating expenses, applicable to the office space occupied by 16th Street or its affiliates at the Project ("16th Street Reimbursable Expenses"), for the period from January 1, 2014 through the end of the Master Lease Term, the parties agree that said operating expenses which are subject to reimbursement from third-party office tenants ("Office Reimbursable Expenses") for the applicable Lease Year at the Project (calculated in a manner consistent with the Office Reimbursable Expenses for prior Lease Years at the Project, based upon the 95% grossed-up operating expenses

passed through to the other office tenants for the applicable Lease Year, the actual insurance expenses paid during the applicable Lease Year, and the actual real estate tax bills paid for the applicable Lease Year, copies of which have been furnished to the Owner), shall be used as the basis for determining implied Project Revenue as well as Percentage Rent due under the Ground Lease for the office space occupied by 16th Street or its affiliates at the Project to the extent that any of the categories of the Office Reimbursable Expenses exceeds the following base amounts ("Base Expenses"): (a) Operating Expense Base Amount: \$2,456,911.19; (b) Tax Base Amount: \$922,423.83; and (c) Insurance Base Amount: \$186,879.43.

Example:

By way of illustration of the foregoing, assuming for purposes of example that in calendar year 2017, 16th Street and its affiliates occupy 90,000 square feet of the total 134,135 rentable square feet of office space at the Project, 16th Street's pro rata share would be 67.10% ($90,000/134,135 = .067096$), and assuming for purposes of example that the Office Reimbursable Expenses for the Project for 2017 calendar year are: (a) Operating Expenses \$2,000,000.00; (b) Taxes \$1,000,000.00; and (c) Insurance \$400,000.00; utilizing the agreed upon Base Expenses as set forth below, the implied Project Revenue and Percentage Rent due thereon would be calculated as follows:

Expense Category	2017 Expense	Base Expense	2017 Expense Less Base Expense	Pro Rata Share	Expense Recovery (Implied Project Revenue)	Percentage Rent (2.5%)
Op. Exp.	\$2,000,000.00	\$2,456,911.19	\$-0-	67.10 %	\$-0-	\$-0-
Insurance	\$400,000.00	\$186,879.43	\$213,120.57	67.10 %	\$143,003.90	\$3,575.10
Taxes	\$1,000,000.00	\$922,423.83	\$77,576.20	67.10 %	\$52,053.63	\$1,301.34

If the expenses for any of the categories for Office Reimbursable Expenses for a particular calendar year are less than the Base Expenses, then, in that case, no Percentage Rent shall be due and no credit to 16th Street will be due for that particular category.

With respect to the Office Reimbursable Expenses, and the operating expenses which are subject to reimbursement from third party ground floor retail tenants ("Retail Reimbursable Expenses") (the Office Reimbursable Expenses and Retail Reimbursable Expenses shall be collectively referred to as "Third Party Reimbursable Expenses"), for the period from January 1, 2014 through the end of the Master Lease Term, the parties agree that said Third Party Reimbursable Expenses shall be calculated in a manner consistent with the Third Party Reimbursable Expenses for prior years at the Project (copies of which have been furnished to the Owner). Additionally, 16th Street shall report said Third Party

Reimbursable Expenses as a line item in the audited financial statements, under the Revenue category, commencing with the 2014 audited financial statement.

(c) Parking Spaces. For purposes of determining an implied Project Revenue and calculating Percentage Rent thereon for parking spaces actually used by 16th Street or its affiliates at the Garage, the parties agree that the fair market value shall be deemed to be \$107.00 per space, per month, commencing on January 1, 2014, and for the duration of the Master Lease Term.

Example:

By way of illustration of the foregoing, assuming for purposes of example that 16th Street and its affiliates use 300 parking spaces at the Garage for each month of the 2017 calendar year on a monthly basis (by virtue of the use of monthly parking cards for access to the Garage), the implied Project Revenue and Percentage Rent attributable to 16th Street and its affiliates' use would be as follows:

Parking Charge Per Month Per Space	Annual Number of Parking Spaces (300 monthly x 12)	Implied Project Revenue	Percentage Rent (2.5%)
\$107.00	3,600	\$385,200.00	\$9,630.00

5. Percentage Rent Payment/Additional Documentation. Effective as of the 2015 calendar year, through the end of the Master Lease Term, solely, the process for submitting the Percentage Rent payment, as required under Section 3.3(b) of the Ground Lease, shall be modified as follows: 16th Street Partners shall submit an estimated Percentage Rent payment, along with the back-up information, within sixty (60) days from the end of each Lease Year, subject to finalizing the audited financial statement for said particular Lease Year, with the adjusted/final payment due within one hundred fifty (150) days from the end of each Lease Year. As long as 16th Street follows this modified procedure, no penalties shall accrue to PKY under the Ground Lease.

16th Street agrees, for the duration of the Master Lease Term, to include, along with the audited financial statement and each final payment of Percentage Rent (including Percentage Rent from the lease of space to third parties and other parking revenue in accordance with the provisions of the Ground Lease), shall provide the Owner with the following: (i) a report with the floor plans reflecting the total square feet of space in the Project actually occupied and used by 16th Street or its affiliates during the prior Lease Year (which Owner may verify through a site visit); (ii) the actual Third Party Reimbursable Expenses and the 16th Street Reimbursable Expenses, as well as the corresponding reconciliations for said expenses for the prior Lease Year; (iii) the number of monthly parking passes or access cards issued to and actually used by employees of 16th

Street and its affiliates; (iv) a copy of the insurance bill(s) paid and covering the prior Lease Year; and (v) proof of payment of real estate taxes paid and covering the prior Lease Year.

6. Agreement Regarding Parking Garage Provisions.

(a) Recognition of Number of Parking Spaces as Constructed in the Garage.
The parties recognize that the Ground Lease provides that the Garage shall contain a minimum number of six hundred (600) parking spaces. The parties acknowledge, however, that the actual number of parking spaces in the Garage is four hundred and ninety-three (493).

(b) Temporary Abatement of Enforcement of the Public Parking Requirements.
The parties acknowledge that Section 6.1 of the Ground Lease requires 100 public parking spaces in the Garage to be made available at all times for use by the general public, and that said provision under the Ground Lease is not being modified. 16th Street has represented that this restriction impairs its ability to lease space to Tenants of the Project, and that the demand for public parking is greater during periods after regular office hours on weekdays and all times during weekends. The parties consider it in the best interests of the Project and the Owner to abate enforcement of this public parking requirement in the Garage, on a temporary basis. Solely during the Master Lease Term, the Owner agrees to (i) abate the enforcement of this provision contained in section 6.1 of the Ground Lease; (ii) permit the reallocation of the total number of public parking spaces that must be available to the general public on weekdays from 7:00 A.M. to 6:30 P.M. (Office Hours) from 100 to 20 spaces; and (iii) increase the number of public parking that must be available for use by members of the general public, after Office Hours on weekdays and at all times during weekends, to 300 spaces. This temporary abatement of enforcement of the public parking requirement shall not affect the requirement to maintain ten (10) parking spaces for monthly parking for members of the general public.

7. Future Master Sublease Approvals. Pursuant to Section 3.3 of the Ground Lease, the City is entitled to receive Percentage Rent on the basis of Project Revenue derived from operation of the Project by the "Tenant" thereunder, or by the "Master Subtenant" under a Master Sublease of all or substantially all of the Project or of twenty percent (20%) or more of the Garage to a single tenant. The parties acknowledge that under circumstances in which any future Master Subtenant and/or its related entities occupy space in the Project for no rental or at a rental rate substantially below market rental rates then in effect (an "Under-market Sublease") Project Revenue may be adversely affected. As such, in connection with the approval of a proposed Master Sublease and to the extent the Owner has approval rights under any proposed "Master Sublease" (as such term is defined Section 10.2(f), of the Ground Lease) pursuant to the Ground Lease, and in addition to any other documents which Owner may be entitled pursuant to the terms of the Ground Lease, Tenant shall provide the Owner with the following documents, in connection with the approval of such proposed Master Sublease: (1) a copy of the Master Sublease; (2) the Master Subtenant's business plan (including proposed market rental value for the spaces under said Master Sublease; proposed operating expenses for the spaces under said Master Sublease; and proposed market rental values for parking spaces in the Garage which may be the subject of said Master Sublease;

(3) an acknowledgement from the Master Subtenant, as to whether or not any of the spaces, which are the subject of said Master Sublease, will be occupied by the Master Subtenant or its related entity for its exclusive use; and (4) Master Subtenant's financial statements.

8. Miscellaneous.

(a) On or about June 12, 2015, 16th Street calculated calendar year 2014 Project Revenue and paid Owner 2014 calendar year Percentage Rent in the total amount of \$140,410.31, which amount includes (in addition to Percentage Rent on direct Project Revenue), Percentage Rent on implied Project Revenue for 16th Street's Exclusive Spaces based upon the terms of this Agreement (i.e., Percentage Rent of \$62,641.56 attributable to Base Rent, \$3,196.71 attributable to Office Reimbursable Expenses, and \$9,983.10 attributable to parking), and the City acknowledges that the method of calculation and amount of Percentage Rent paid by 16th Street for 16th Street's Exclusive Spaces for the calendar year 2014 complies with the provisions of this Agreement and satisfies the Percentage Rent payment due for the 16th Street Exclusive Spaces for the 2014 calendar year.

(b) 16th Street's agreement to pay the Settlement Amount to the Owner in full and final satisfaction of the Outstanding Claims has been made in order to avoid litigation, and shall not be construed as an admission or evidence of liability, responsibility, or fault of any kind by 16th Street or PKY.

(c) The parties hereto stipulate and agree that this Settlement Agreement represents the entire agreement by, between and among them with respect to the subject matter hereof, and the provisions contained herein may not be changed or altered without the express written consent of all of the parties.

(d) All of the parties hereto participated in the preparation of this Settlement Agreement and in the process of preparation thereof, each and all of the parties acknowledge hereby that each party was fully and adequately represented by its own respective legal counsel and has received legal advice from its own respective legal counsel.

(e) In the event of any litigation arising out of this Settlement Agreement, this Settlement Agreement shall not be construed in favor or against any party by reason of its process or preparation.

(f) If any legal action, proceeding, or hearing is brought by any of the undersigned parties to enforce the terms of this Agreement, then the prevailing party shall be entitled to recover legal costs and reasonable attorneys' fees incurred in connection with said action. All parties to this Agreement shall bear their own respective legal costs and attorneys' fees in connection with the Dispute or Outstanding Claims through the Effective Date of this Agreement.

(g) This Settlement Agreement shall be signed in counterpart originals by each and all of the parties hereto and each such counterpart original shall be deemed an original for all purposes.

[SIGNATURE PAGES FOLLOW]

DRAFT

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement effective as of the day and year first set forth above.

ATTEST:

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of
Florida

Rafael E. Granado, City Clerk

Philip Levine, Mayor

Date: _____

ATTEST:

PKY LINCOLN PLACE, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

ATTEST:

16TH STREET PARTNERS, LLC,
a Florida limited liability company

By: LNR Property LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

**COUNSELING REPORT
MARKET RENT ANALYSIS FOR OFFICE SPACE**

**Lincoln Place
1601 Washington Ave.
Miami Beach, FL 33139**

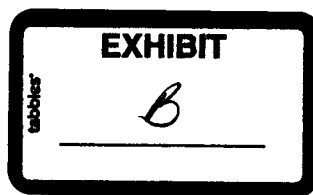
Report 201541

PREPARED FOR

**City of Miami Beach
Mark Milisits
Asset Manager
Tourism, Culture and Economic Development Department
Office of Real Estate
1755 Meridian Ave.
Miami Beach, FL 33139**

PREPARED BY

**BLAZEJACK & COMPANY
172 W Flagler Street, Suite 340
Miami, Florida 33130
Phone: (305) 372-0211
Fax: (305) 374-1948**



BLAZEJACK & COMPANY
REAL ESTATE COUNSELORS

June 25, 2015

City of Miami Beach

Mark Milisits
Asset Manager
Tourism, Culture and Economic Development Department
Office of Real Estate
1755 Meridian Ave.
Miami Beach, FL 33139

Re: Appraisal of Real Property - 201541

Fair Market Rent analysis for occupied office spaces by LNR.
Lincoln Place
1601 Washington Ave.
Miami Beach, FL 33139

Dear Mr. Milisits:

At your request, we have completed a retrospective analysis of the market rent as of January 2014 of the above referenced property, to various Assumptions and Limiting Conditions set forth in the accompanying report. The physical inspection and analysis that form the basis of the report has been conducted by the undersigned.

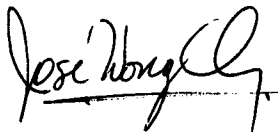
Our analyses have been prepared in compliance with the standards and regulations of the Uniform Standards of Professional Practice (USPAP). The accompanying report includes pertinent data secured in our investigation, exhibits and the details of the processes used to arrive at our conclusion of value.

As a result of the examination and study made, it is my opinion that the Fair Market Rent for small spaces, subject to economic conditions prevailing, as of January 1, 2014, the date of the analysis was:

Market Rent as of January 2014				
Property	Address	Market Rent	Type of Rent	Total Operating Expenses
Office	1601 Washington Ave.	\$32	FS	\$11.36

Respectfully submitted,

BLAZEJACK & COMPANY



Jose Wong
Senior Consultant
Cert Gen RZ-2797

SUMMARY OF FACTS AND CONCLUSIONS



Property Name: Lincoln Place

Property Type: Office

Location: 1601 Washington Ave. Miami Beach
FL 33139

Parcel Identification: 02-3234-919-0840
Source: Miami Dade Public Records

Owner: City of Miami Beach

Client: City of Miami Beach

Interest Appraised: Fair Market Rent

Date of Appraisal: January 1, 2014

Dates of Inspection: June 22, 2015

Date of Report: June 25, 2015

Property Size: 78,168 SF (space occupied by LNR)

Highest and Best Use:
As Vacant: Mixed-Use Building Development

As Improved: Continued use as Mixed-Use Building

Retrospective Market Rent Indication, as of January 1, 2014:

Market Rent as of January 2014				
Property	Address	Market Rent	Type of Rent	Total Operating Expenses
Office	1601 Washington Ave.	\$32	FS	\$11.36

TABLE OF CONTENTS

CERTIFICATE OF VALUE	1
ASSUMPTIONS AND LIMITING CONDITIONS	2
MARKET RENT ANALYSIS	3
IDENTIFICATION OF THE PROPERTY	4
PURPOSE DATE AND FUNCTION OF THE REPORT	5
SCOPE OF THE ASSIGNMENT	5
LEGAL DESCRIPTION	5
PROPERTY HISTORY	6
DEFINITIONS OF VALUE AND INTEREST APPRAISED	6
MARKET RENT ANALYSIS	7
CONCLUSION OF MARKET RENT	11

ADDENDA

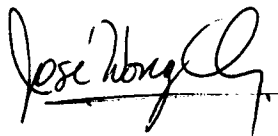
Exhibit A	Subject Plans and Photographs
Exhibit B	Comparable Rent Photographs
Exhibit C	Engagement Letter
Exhibit D	Qualifications of the Appraiser

CERTIFICATE OF VALUE

I certify that, to the best of my knowledge and belief,

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the parties involved.
- We have performed no services regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
- our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of subsequent event directly related to the intended use of this appraisal.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- Jose Wong has made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the persons signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representative.
- As the date of this report Jose Wong has completed the continuing education program of the Appraisal Institute as a Practicing Affiliate member.

BLAZEJACK & COMPANY



Jose Wong
Senior Consultant
Cert Gen RZ-2797

ASSUMPTIONS AND LIMITING CONDITIONS

The appraisal is subject to the following assumptions and limiting conditions:

- 1 No survey of the subject property was undertaken.
- 2 The subject property is free and clear of all liens except as herein described. No responsibility is assumed by the appraisers for matters, which are of a legal nature, nor is any opinion on the title rendered herewith. Good and marketable title is assumed.
- 3 The information contained herein has been gathered from sources deemed to be reliable. No responsibility can be taken by the appraisers for its accuracy. Correctness of estimates, opinions, dimensions, sketches and other exhibits which have been furnished and have been used in this report are not guaranteed. The value estimate rendered herein is considered reliable and valid only as of the date of the appraisal, due to rapid changes in the external factors that can significantly affect the property value.
- 4 This study is to be used in whole and not in part. No part of it shall be used in conjunction with any other appraisal. Publication of this report or any portion thereof without the written consent of the appraiser is not permitted.
- 5 The appraisers herein, by reason of this report, are not required to give testimony in court with reference to the property appraised unless notice and proper arrangements have been previously made therefore.
- 6 The value estimate assumes responsible ownership and competent management. The appraiser assumes no responsibility for any hidden or in apparent conditions of the property, subsoil, or structures, which would render it more or less valuable. No responsibility is assumed for engineering, which might be required to discover such factors.
- 7 Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales or other media without the written consent and approval of the authors, particularly as to valuation conclusions, the identity of the appraisers or firm with which they are connected, or any reference to the Appraisal Institute.
- 8 Any exhibits in the report are intended to assist the reader in visualizing the property and its surroundings. The drawings are not intended as surveys and no responsibility is assumed for their cartographic accuracy. Any drawings are not intended to be exact in size, scale, or detail. Areas and dimensions of the property may or may not have been physically measured. If furnished by the principal or from plot plans or surveys furnished by the principal, or from public records, we assume them to be reasonably accurate. No responsibility is assumed for discrepancies, which may become evident from a licensed survey of the property.
- 9 The Americans with Disabilities Act (ADA) became effective January 26, 1992 sets strict and specific standards for handicapped access to and within most commercial and industrial buildings. Determination of compliance with these standards is beyond appraisal expertise and, therefore, has not been attempted by the appraisers. For purposes of this appraisal, we are assuming the building is in compliance; however, we recommend an architectural inspection of the building to determine compliance or requirements for compliance.

MARKET RENT ANALYSIS

IDENTIFICATION OF THE PROPERTY

The property under analysis in this report is located at 1601 Washington Ave. Miami Beach, FL 33139, at the NEC of Washington Avenue and 16th Street.

The building comprises about 105,194 SF of office space in 8 floors and 28,941 SF of retail space on the ground. The site is owned by the City of Miami Beach, according to the Public Records of Miami Dade County, as folio No. 02-3234-919-0840.

We have been retained to make a market rent study of 78,168 SF of office space occupied by LNR, on floors 5th, 6th, 7th & 8th (19,542 SF/floor).

The owner of the building is held in the name of 16th Street partners LLC c/o The Comras Company of Florida Inc. The folio of the leasehold is No.02-3234-919-0842.



PURPOSE DATE AND FUNCTION OF THE REPORT

The purpose of this report is to estimate the Fair Market Rent for the office space occupied by LNR. The date of the analysis was January 1, 2014. It is understood that the function of this report is for internal asset management for lease negotiations.

SCOPE OF THE ASSIGNMENT

This is a complete appraisal presented in a narrative, summary format. USPAP defines scope of the work as the type and extent of research and analysis in an assignment.

The scope of this analysis was to inspect the property, consider market characteristics and trends, collect and analyze pertinent data, develop a conclusion and estimate the property's market rent. During the course of this assignment, we developed and analyzed current office space rents located in the Miami Beach area.

The extent of verification consisted of assembling and analyzing raw data gathered from a variety of sources including public records data services, news periodicals, broker or knowledgeable third parties when available, and in-houses files.

LEGAL DESCRIPTION

FULL LEGAL DESCRIPTION	FULL LEGAL DESCRIPTION
ALTON BEACH 1ST SUB PB 2-77 LOTS 17 & 18 & 20 FT ALLEY LYG N OF LOT 17 LESS E60FT & LESS BEG SW COR OF LOT 16 TH S 00 DEG W 116.79FT N 89 DEG E 85.20FT N 00 DEG E 116.70FT N 89 DEG W 85.19FT TO POB & ALL LOTS 19 THRU 22 & AIR RIGHTS DESC IN OR 19236-4458 LOT SIZE 64740 SQ FT	N OF LOT 17 LESS E60FT & LESS BEG SW COR OF LOT 16 TH S 00 DEG W 116.79FT N 89 DEG E 85.20FT N 00 DEG E 116.70FT N 89 DEG W 85.19FT TO POB & ALL LOTS 19 THRU 22 & AIR RIGHTS DESC IN OR 19236-4458 LOT SIZE 64740 SQFT AS PER LEASE AGREEMENT WITH CITY OF MIAMI BEACH F/A/U 02-3234-019-0840
Folio No. 02-3234-019-0840	Folio No. 02-3234-019-0842

PROPERTY HISTORY

The property site is held in the name of City of Miami Beach according to the Public Records of Miami Dade County. We are not aware of any transfer of the property or purchase listing or offering within the past five years.

Folio No. 02-3234-019-0842: The property is a leasehold interest owned by 16th Street Partners LLC c/o The Comras Company of Fla Inc.

DEFINITIONS OF VALUE AND INTEREST APPRAISED

According to the Code of Federal Regulations, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), and according to the 12th Edition of The Appraisal of Real Estate, market value is defined as follows:

Market Value

The most probable price, which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1 Buyer and seller are typically motivated.
- 2 Both parties are well informed or well advised, and acting in what they consider their own best interests;
- 3 A reasonable time is allowed for exposure on the open market.
- 4 Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- 5 The price represents a normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Fee Simple Interest

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed governmental powers of taxation, eminent domain, police power, and escheat.

Leased Fee Interest

An ownership interest held by a landlord with the right to use and occupancy conveyed by a lease to others; usually consists of the right to receive rent and the right to possession at termination of the lease.

Market Rent

The rental income that a property would most probably command on the open market; indicated by current rents paid and asked for comparable space as of the date of the appraisal.

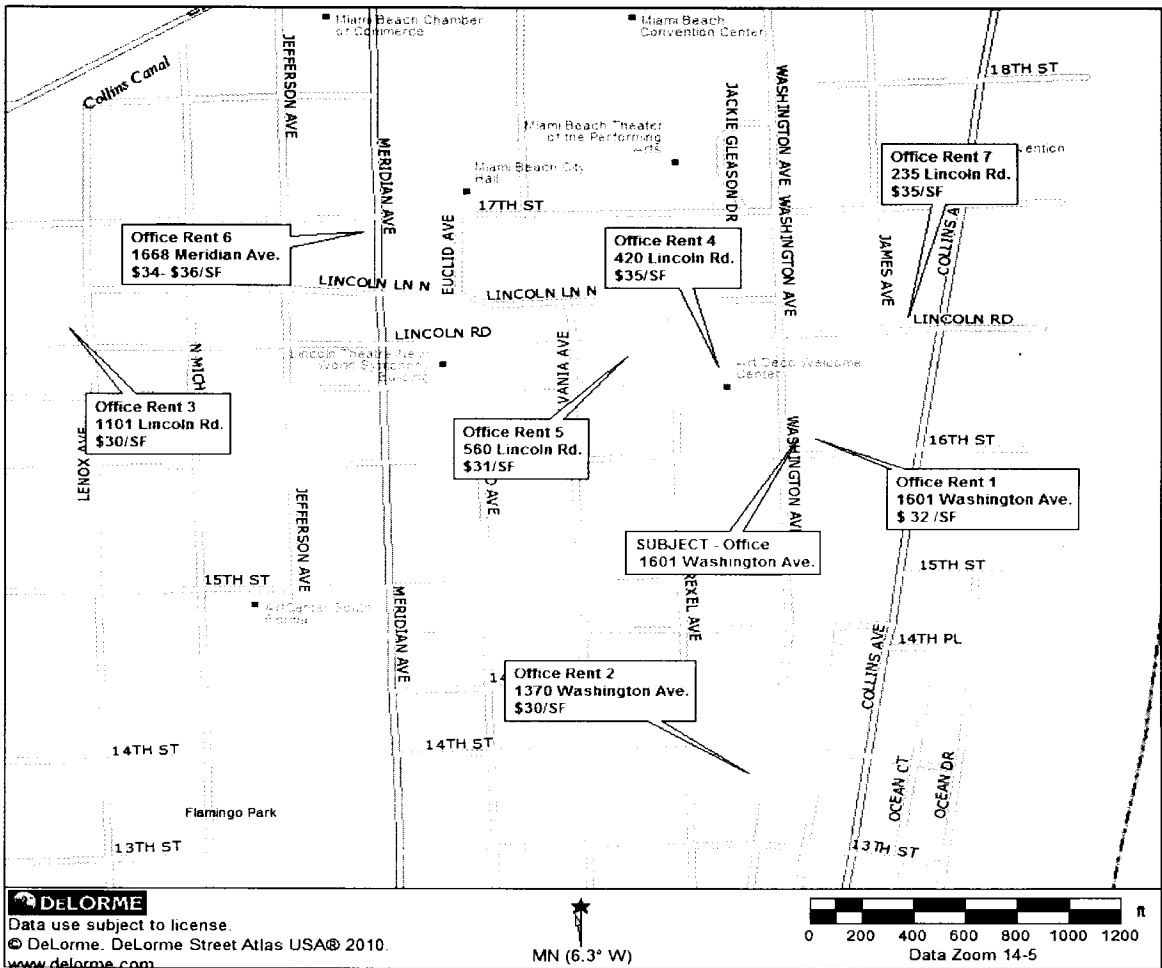
Source: Appraisal Institute, The Appraisal of Real Estate, 13th Edition, (Chicago, 2008)

MARKET RENT ANALYSIS

Office Market

In order to estimate the market rent of the subject office space occupied by LNR, a rent survey of similar spaces in the Miami Beach area was conducted. The basis for classification was location, design, and quality of construction, quality of interior finishes, age, and condition. Size is also a sensible, small space with less than 6,000 SF attains higher rent than bigger spaces.

The rent comparable selected give an indication of the level of rent that could be commanded by the subject if offered in the open market. The rent survey, a location map, and a table of adjustments can be found following. Photos of the comparable office spaces can be found in the Addenda.



Office Comparable Location Map

All the office rates in our survey are asking rates. Leasing agents interviewed in gathering rental data indicated that no concessions were provided although some terms were negotiable depending on the size of space and length of the lease. In most cases, the rates actually achieved in leases are near the asking rates. No tenant improvements were considered, since the office space comps were in good condition.

The office spaces occupied by LNR have good quality construction finish, and are in excellent condition.

Comparable Office Listing Rental Summary - Miami Beach						
No.	Property Name Location	Vacant (SF)	Year Built	Office Rate	Condition	Comments
1	Lincoln Place 1601 Washington Ave. Miami Beach FL 33139	1,500 1,480 2,537	N/A	\$32	FS	There are 3 spaces available. Suite 200 : 1,500 SF, Suite 320: 1,480 SF, and Suite 330 : 2,537 SF. The building has 110,946 SF of office space, and the 5-story parking structure includes 534 spaces 24/7 security on property. The building is located one block south from Lincoln Road. The space is listed at \$36/SF. \$20/SF for Tenant Improvements can be given to tenants with good credit and leases with a 5 year term.
2	1370 Washington Ave. Miami Beach FL 33139	600	1948	\$30	FS	Located in the Art Deco District, in the heart of South Beach. The office space is in moving condition.
3	1101-1113 Lincoln Road Miami Beach FL 33139	736 1,169	2010	\$30	FS	Suite 330 has 2,019 SF office space available. The building has an 8-story concrete and steel reinforced structure with a high quality space on South Beach. It's considered a B building. Municipal parking is available nearby.
4	420 Lincoln Road Miami Beach FL 33139	1,980 to 7,200	1940	\$35	FS	This building has two wings: one 7-story wing and one 4-story wing. There is retail on the ground level and office space on the remaining floors. Building underwent extensive renovations to all common areas. There are 5 spaces available on floors 2, 3 and 4.
5	560 Lincoln Road Miami Beach FL 33139	2,500	1929	\$31.20	FS	Fully built-out and fully furnished. The 4-story office building has entrance on Pennsylvania Avenue.
6	1688 Meridian Ave. Miami Beach FL 33139	6,333 9,687	1961	\$36.00 \$34.00	FS FS	\$11 All new bathrooms and updated common areas. 1688 Meridian was designed by renowned architect Morris Lapidus. Biometric secure access. The building is located one block from Lincoln Road and Miami Beach Convention Center, across the street from Macy's. The space on listing is on the 6th floor.
7	235 Lincoln Road Miami Beach FL 33139	945	1947	\$35.00	FS	Built out office space ready to move in. Elegant lobby and corridors. This is a B office building with a total of 20,000 square feet of office space. Everything has been updated, elevator, code entrance. Parking located adjacent. All common area charges included, and electricity is included in the pricing except for the penthouse level. The building is located in the NEC of Lincoln Rd and James Ave.
SUBJECT:						
	Lincoln Place - Office 1601 Washington Ave. Miami Beach FL 33139	78,168	N/A		NNN	The subject retail faces Washington and 16th Street. It has good quality finishing and is in good condition.

OFFICE RENT COMPS ADJUSTMENT GRID							
Rent \$/SF	1 \$32	2 \$30	3 \$30	4 \$35	5 \$31	6 \$35	7 \$35
Location	0%	0%	0%	-5%	-5%	5%	-5%
Building Quality	0%	10%	0%	0%	5%	0%	5%
Condition	0%	5%	0%	0%	0%	0%	5%
Size	0%	0%	0%	0%	0%	0%	0%
Others	0%	0%	0%	0%	0%	0%	0%
Overall Adjustment	0%	15%	0%	-5%	0%	5%	5%
Adjusted Rent	\$32	\$35	\$30	\$33	\$31	\$37	\$37

Average All Comps:	\$33
---------------------------	------

Chosen Office Rent (\$/SF) for Subject as of June 2015	\$33 Full Service
Chosen Office Rent (\$/SF) for Subject as of January 2014	\$32 Full Service

LEGEND		
Comparison	Adjustment	
Similar to Subject	=	the comp does not need adjustment
Inferior to Subject	+	the comp needs a plus adjustment
Superior to Subject	-	the comp needs a negative adjustment

Based on comparison with the market data we concluded that the market rent for small office spaces with the same finishing construction quality and excellent condition as the occupied by LNR was \$32 per rentable square foot per year on a full service as of January 2014.

We have considered that the market rent included a 5-year term rental lease.

Market annual increases on base rent and operating expenses is 3%.

Market office rent for a large office area as the subject was estimated at \$30/SF full service as of January 2014.

Operating Expenses

The annual operating expenses of the subject property were projected in this analysis based on similar properties.

OFFICE OPERATING EXPENSES STATEMENT June 2015	
<u>EXPENSES:</u>	<u>Per SF</u>
FIXED EXPENSES	
Property Taxes	\$2.68
<u>Insurance</u>	<u>\$1.31</u>
TOTAL FIXED EXPENSES:	\$3.99
VARIABLE EXPENSES	
Administrative & Management	\$2.62
Repairs/Maintenance	\$1.68
Utilities	\$2.20
Cleaning	\$0.72
Others	\$0.00
<u>Reserves</u>	<u>\$0.15</u>
	\$7.37
<u>TOTAL EXPENSES</u>	<u>\$11.36</u>

Our estimated total stabilized Operating Expenses for the stabilized year for office space was \$11.36 per square foot of rentable area.

CONCLUSION OF MARKET RENT

Market Office Rent is estimated on full service or “gross” basis, wherein the landowner pays all expenses, including common area utilities, management, administration, common area costs, cleaning, taxes, and insurance. The tenant has to pay the electricity they consume.

The market rent and operating expenses for small office spaces located at 1601 Washington Avenue in Miami Beach, as of January 01, 2014 are:

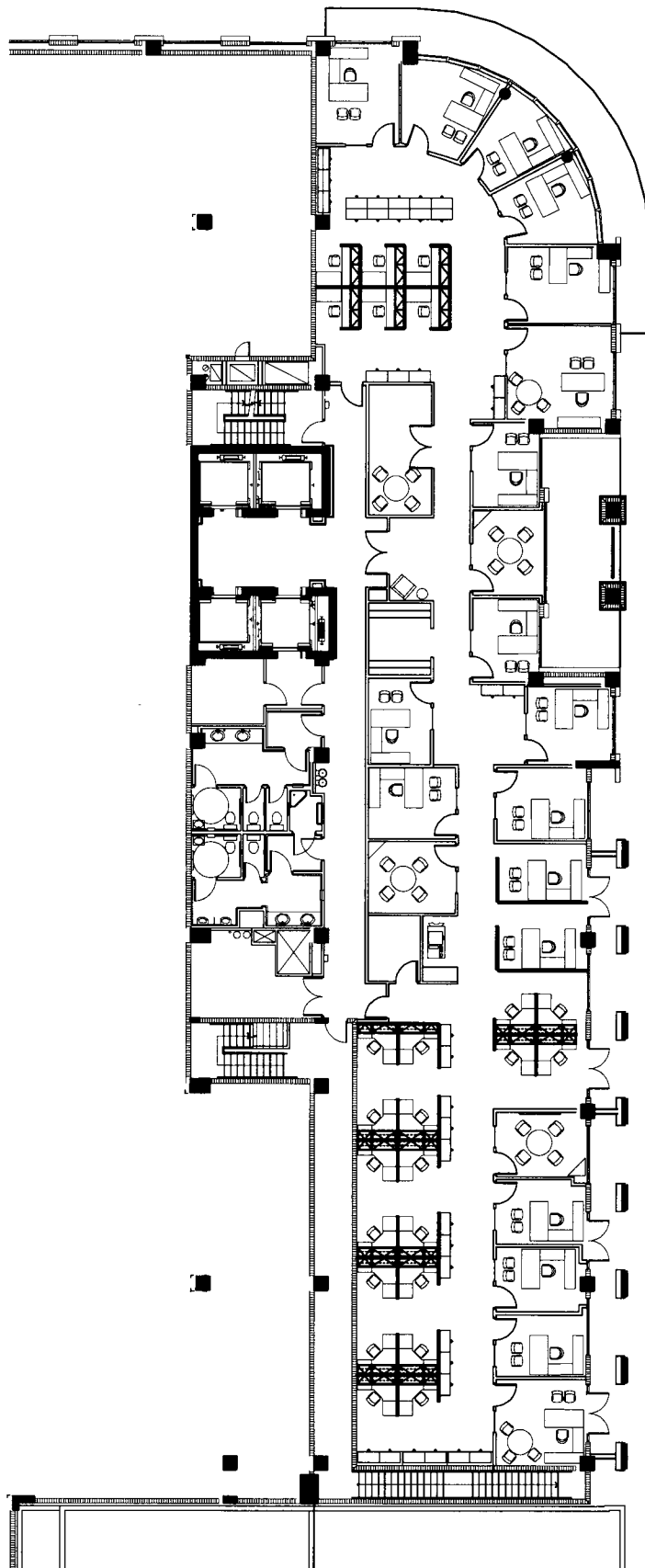
Market Rent as of January 2014				
Property	Address	Market Rent	Type of Rent	Total Operating Expenses
Office	1601 Washington Ave.	\$32	Gross	\$11.36

A D D E N D A

Exhibit A
Subject Plans and Photographs

SHEET TITLE:	LNR
JOB NUMBER:	
ISSUE DATE:	01 FEBRUARY 2012
SCALE:	1/16"=1'-0"

ADD Inc	Architecture Interiors Planning
One Biscayne Tower	
2 South Biscayne Blvd.	
Miami, FL 33131	
T. 305.482.6700	
F. 305.482.8770	
www.addinc.com	
Miami	Boston



2ND FLOOR

ADD Inc

Architecture Interiors Planning

One Biscayne Tower
2 South Biscayne Blvd
Miami, FL 33131
T. 305.482.8700
F. 305.482.8770
www.addinc.com

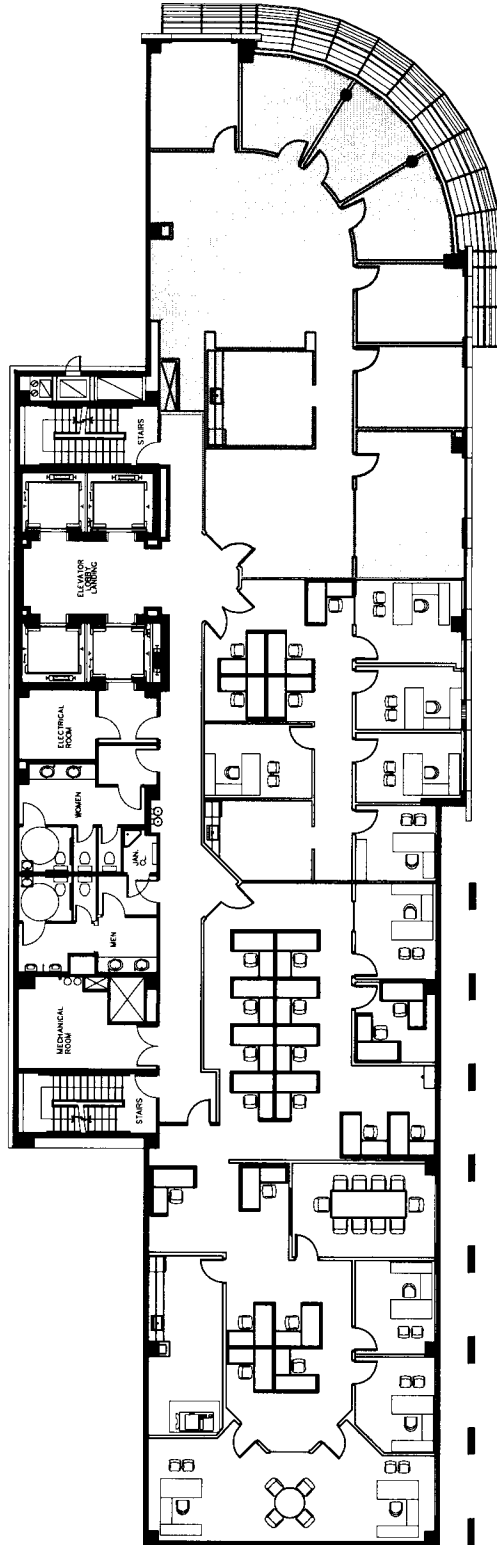
Miami Boston

SHEET TITLE: LNR

JOB NUMBER:

ISSUE DATE: 01 FEBRUARY 2012

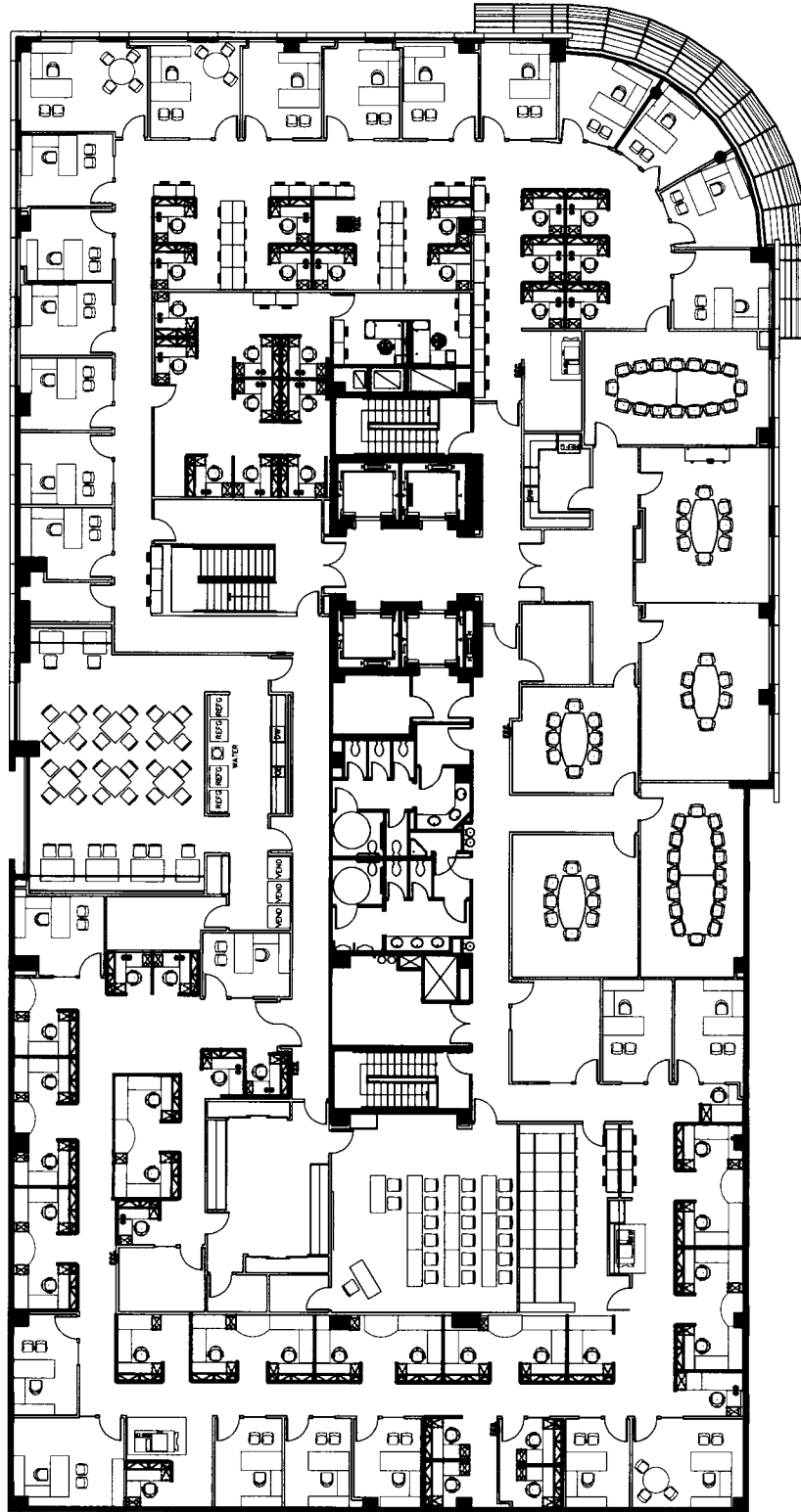
SCALE: 1/16"=1'-0"



SHEET TITLE: LNR
 JOB NUMBER:
 ISSUE DATE: 01 FEBRUARY 2012
 SCALE: 1/16" = 1'-0"

ADD Inc Architecture Interiors Planning
 One Biscayne Tower
 2 South Biscayne Blvd.
 Miami, FL 33131
 T. 305.482.8700
 F. 305.482.8770
 www.addinc.com

Miami Boston



5TH FLOOR

SHEET TITLE: LNR

JOB NUMBER:

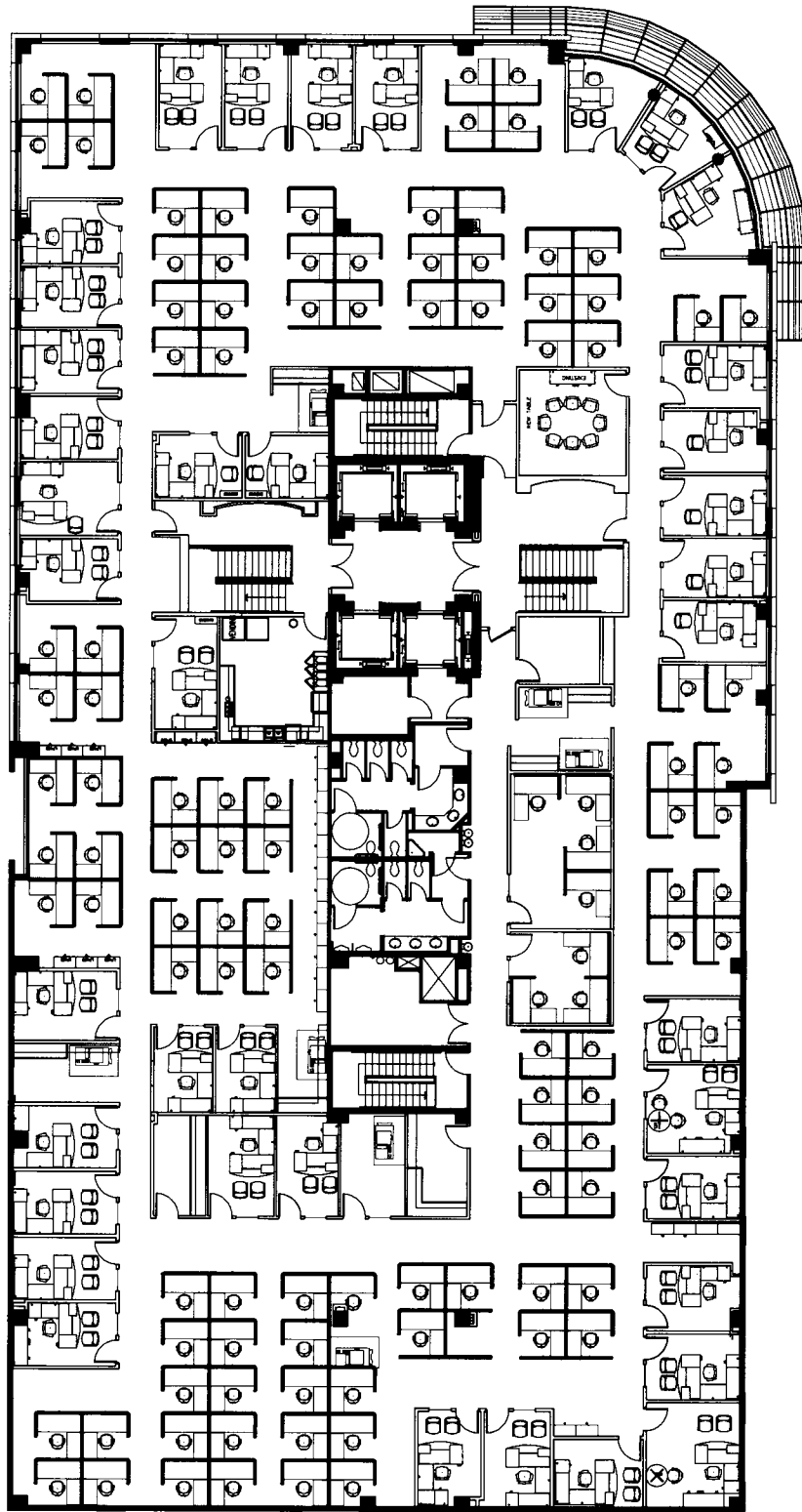
ISSUE DATE: 01 FEBRUARY 2012

SCALE: 1/16" = 1'-0"

ADD Inc Architecture Interiors Planning

One Biscayne Tower
2 South Biscayne Blvd
Miami, FL 33131
T: 305.482.8700
F: 305.482.8770
www.addinc.com

Miami Boston

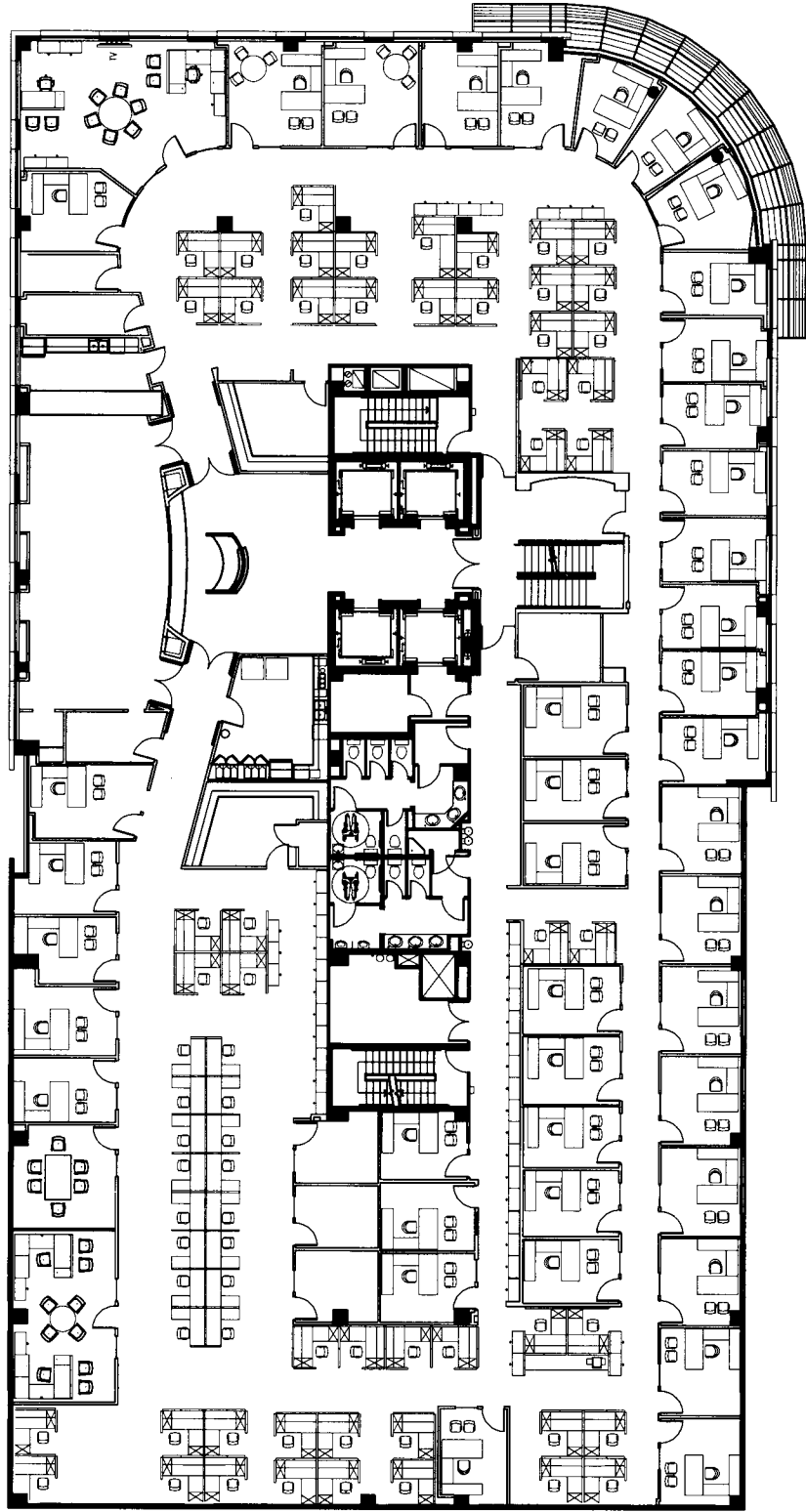


6TH FLOOR

SHEET TITLE: LNR
 JOB NUMBER:
 ISSUE DATE: 01 FEBRUARY 2012
 SCALE: 1/16" = 1'-0"

ADD Inc Architecture Interiors Planning
 One Biscayne Tower
 2 South Biscayne Blvd
 Miami, FL 33131
 T. 305.482.8700
 F. 305.482.8770
 www.addinc.com

Miami Boston

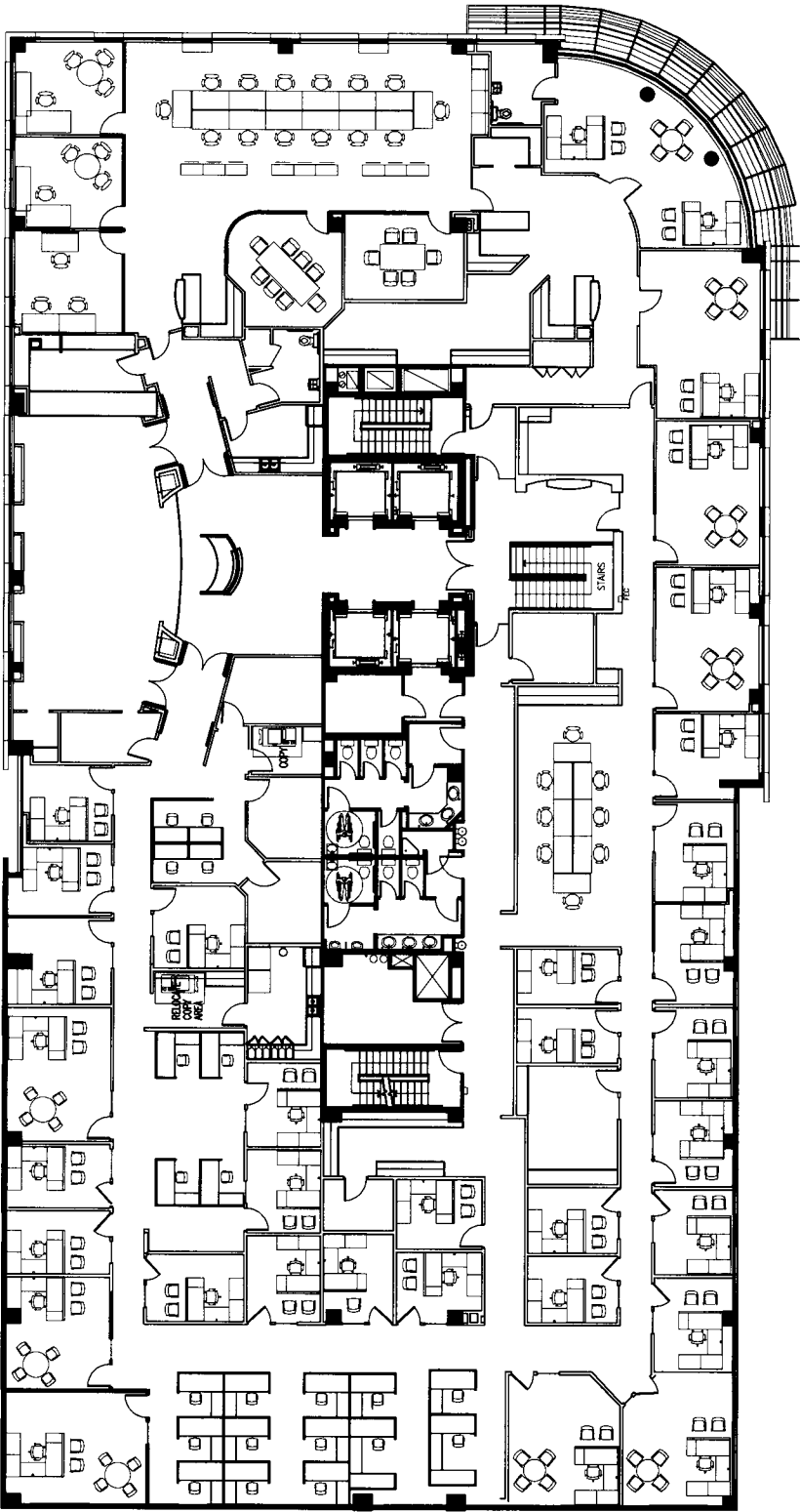


7TH FLOOR

SHEET TITLE: LNR
 JOB NUMBER:
 ISSUE DATE: 01 FEBRUARY 2012
 SCALE: 1/16" = 1'-0"

ADD Inc Architecture Interiors Planning
 One Biscayne Tower
 2 South Biscayne Blvd
 Miami, FL 33131
 T: 305 482 8700
 F: 305 482 8770
 www.addinc.com

Miami Boston



8TH FLOOR

1601 Meridian Avenue.-Retail.



1601 Washington Ave.

COMMISSION ITEM SUMMARY

Condensed Title:

A Resolution of the Mayor and City Commission of the City of Miami Beach, Florida, Adopting the Sixth Amendment to the Capital Budget for Fiscal Year 2014/15.

Key Intended Outcome Supported:

Ensure Value and Timely Delivery of Quality Capital Projects, Improve Storm Drainage Citywide, and Maintain City's Infrastructure

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Item Summary/Recommendation:

Planning for capital improvements is an ongoing process; as needs change within the City, capital programs and priorities must be adjusted. The Capital Improvement Plan ("CIP") serves as the primary planning tool for systematically identifying, prioritizing and assigning funds to critical City capital development, improvements and associated needs.

The City's capital improvement plan process begins in the spring when all departments are asked to prepare capital improvement updates and requests on the department's ongoing and proposed capital projects. Individual departments prepare submittals identifying potential funding sources and requesting commitment of funds for their respective projects.

The CIP is updated annually and submitted to the City Commission for adoption. The 2014/15 – 2018/19 Capital Improvement Plan and FY 2014/15 Capital Budget was adopted on December 2, 2014 by resolution 2014-28863.

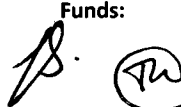
The First Amendment to the FY 2014/15 Capital Budget was also approved on December 2, 2014 by resolution 2014-28864. The Second Amendment to the FY 2014/15 Capital Budget was also approved on January 14, 2015 by resolution 2015-28901. The Third Amendment to the FY 2014/15 Capital Budget was approved on March 11, 2015 by resolution 2015-28951. The Fourth Amendment to the FY 2014/15 Capital Budget was approved on April 15, 2015 by resolution 2015-28986. The Fifth Amendment to the FY 2014/15 Capital Budget was approved on June 10, 2015 by resolution 2015-29048.

Section 166.241(4)(c.), Florida Statutes, requires that a municipality's budget amendment must be adopted in the same manner as the original budget. The Sixth Amendment to the FY 2014/15 Capital Budget totals an increase of \$11,344,634 and in order to provide additional funding to the following three capital projects:

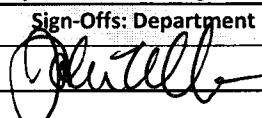
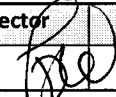

1. West Avenue / Bay Road Improvements
2. Sunset Harbor Pump Station Upgrades
3. Upsizing Under Capacity Water Mains Citywide from Indian Creek Drive to 41st Street

Advisory Board Recommendation:

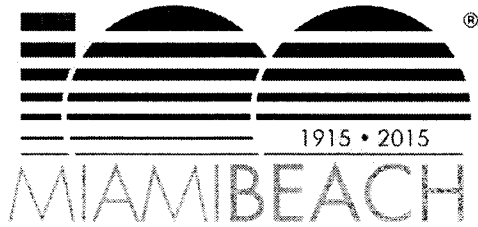
Financial Information:

Source of Funds:	Amount	Account
 OBPI	\$8,683,928	Stormwater Bonds – Fund 432
	\$2,580,706	Line of Credit – Fund 429
	\$80,000	Water & Sewer 2000 Bonds – Fund 424
	Total	\$11,344,634

City Clerk's Office Legislative Tracking:

Sign-Offs: Department Director	Assistant City Manager	City Manager
 		





City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 2, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING THE SIXTH AMENDMENT TO THE CAPITAL BUDGET FOR FISCAL YEAR 2014/15.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

BACKGROUND

Planning for capital improvements is an ongoing process; as needs change within the City, capital programs and priorities must be adjusted. The Capital Improvement Plan ("CIP") serves as the primary planning tool for systematically identifying, prioritizing and assigning funds to critical City capital development, improvements and associated needs.

The City's capital improvement plan process begins in the spring when all departments are asked to prepare capital improvement updates and requests on the department's ongoing and proposed capital projects. Individual departments prepare submittals identifying potential funding sources and requesting commitment of funds for their respective projects.

The CIP is updated annually and submitted to the City Commission for adoption. The 2014/15 – 2018/19 Capital Improvement Plan and FY 2014/15 Capital Budget was adopted on December 2, 2014 by resolution 2014-28863.

The First Amendment to the FY 2014/15 Capital Budget was approved on December 2, 2014 by resolution 2014-28864. The Second Amendment to the FY 2014/15 Capital Budget was approved on January 14, 2015 by resolution 2015-28901. The Third Amendment to the FY 2014/15 Capital Budget was approved on March 11, 2015 by resolution 2015-28951. The Fourth Amendment to the FY 2014/15 Capital budget was approved on April 15, 2015 by resolution 2015-28986. The Fifth Amendment to the FY 2014/15 Capital budget was approved on June 10, 2015 by resolution 2015-29048.

Section 166.241(4)(c.), Florida Statutes, requires that a municipality's budget amendment must be adopted in the same manner as the original budget. Administration recommends adopting the resolution for the sixth amendment to the FY 2014/15 Capital Budget.

SIXTH AMENDMENT TO THE FY 2014/15 CAPITAL BUDGET

The Sixth Amendment to the FY 2014/15 Capital Budget totals an increase of \$11,344,634 in order to provide additional funding to the following capital projects.

1. **West Avenue / Bay Road Improvements:** At its October 29, 2014 meeting, the City Commission approved Change Order No. 3 for additional scope including additional stormwater and drainage improvements, a new pump station, and related above-ground streetscape improvements. This budget amendment moves the appropriated but unencumbered funds to cover the additional costs of the change order. The funding of \$7,014,634 for this amendment would come from the following sources:
 - \$4,433,928 of Stormwater Bonds, Series 2015 – Fund 432
 - \$2,204,000 of Water and Sewer Bonds 2000S – Fund 424 reallocate from the 54 inch Diameter Redundant Sewer Force Main project; the Water & Sewer funds would be replaced with Line of Credit-Fund 429
 - \$376,706 of Gulf Breeze 2006 – Fund 423 reallocate from the Venetian Neighborhood-Venetian Islands project; the Water & Sewer funds would be replaced with Line of Credit-Fund 429

Prior Years' Appropriations	\$34,242,008
September 2, 2015 Budget Amendment	7,014,634
Proposed Total Appropriations	\$41,256,642

2. **Sunset Harbor Pump Station Upgrades:** At its October 29, 2014 meeting, the City Commission approved Change Order No. 1 for additional engineering services, drainage structure modification, drainage pipe, and water main replacement. This budget amendment appropriates funds to cover the additional costs of the change order. The necessary funding of \$4,250,000 for this amendment would come from Stormwater Bonds, Series 2015 – Fund 432.

Prior Years' Appropriations	\$8,027,718
September 2, 2015 Budget Amendment	4,250,000
Proposed Total Appropriations	\$12,277,718

- 3. Upsizing Under Capacity Water Mains Citywide from Indian Creek Drive to 41st Street:** This budget amendment would allocate \$80,000 from fund balance in Water & Sewer Bonds 2000S – fund 424. The \$80,000 would be used to cover the settlement agreement between the City of Miami Beach and Bermello Ajamil & Partners, Inc. for extended Professional Construction Engineering and Inspection (CEI) services for the FDOT work included in the water mains and sanitary sewer mains, and milling and resurfacing improvements along Indian Creek Drive, between 26th and 41st streets.

Prior Years' Appropriations	\$3,035,669
September 2, 2015 Budget Amendment	80,000
Proposed Total Appropriations	\$3,115,669

JLM/JW



RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING THE SIXTH AMENDMENT TO THE CAPITAL BUDGET FOR FISCAL YEAR 2014/15.

WHEREAS, the final Capital Improvement Plan for FY 2014/15 – 2018/19 and the final Capital Budget for FY 2014/15 was adopted via Resolution 2014-28863 on December 2, 2014; and

WHEREAS, the first amendment to the Miami Beach Capital Budget for FY 2014/15 was adopted on December 2, 2014 via Resolution No. 2014-28864; and

WHEREAS, the second amendment to the Miami Beach Capital Budget for FY 2014/15 was adopted on January 14, 2015 via Resolution No. 2015-28901; and

WHEREAS, the third amendment to the Miami Beach Capital Budget for FY 2014/15 was adopted on March 11, 2015 via Resolution No. 2015-28951; and

WHEREAS, the fourth amendment to the Miami Beach Capital Budget for FY 2014/15 was adopted on April 15, 2015 via Resolution No. 2015-28986; and

WHEREAS, the fifth amendment to the Miami Beach Capital Budget for FY 2014/15 was adopted on June 10, 2015 via Resolution No. 2015-29048; and

WHEREAS, the proposed amendment to the FY 2014/15 Capital Budget is included in "Attachment A – Source of Funds" and "Attachment B – Programs"; and

WHEREAS, the City Administration recommends that FY 2014/15 Capital Budget be amended to add appropriations totaling \$11,344,634 to the projects as highlighted in "Attachment C – Projects" and as further detailed in the attached Commission Memorandum.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, that the Mayor and City Commission hereby adopt the Sixth Amendment to the Capital Budget for Fiscal Year 2014/15 as set forth in Attachment A (Source of Funds), Attachment B (Programs), and Attachment C (Projects).

PASSED AND ADOPTED this 2nd day of September, 2015.

ATTEST:

Philip Levine, Mayor

Raphael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 8/29/15

City Attorney *[Signature]* Date

ATTACHMENT A
FY 2014/15 CAPITAL BUDGET
SOURCE OF FUNDS
Amended 09/02/15

Funding Source	Amended 6/10/15	Amended 9/2/15	Revised
2003 GO Bonds - Neighborhood Improvement	\$ 160,000		\$ 160,000
2003 GO Bonds - Fire Safety	625,000		625,000
2010 Parking Bonds Reso. 2010-27491	2,301,000		2,301,000
7th Street Garage	1,350,695		1,350,695
Capital Projects Financed by Other Funds	2,265,000		2,265,000
Capital Reserve	8,521,285		8,521,285
Convention Center	525,000		525,000
Concurrency Mitigation	2,060,000		2,060,000
Equipment Loan/Lease	4,947,000		4,947,000
Fleet Management Fund	50,000		50,000
Half Cent Transit Surtax - County	2,333,000		2,333,000
Info & Communications Technology Fund	280,000		280,000
Line of Credit	0	2,580,706	2,580,706
Local Option Gas Tax	336,000		336,000
MB Quality of Life Resort Tax Fund - 1%	5,235,900		5,235,900
Miami-Dade County Bond	54,400,000		54,400,000
NB Quality of Life Resort Tax Fund - 1%	2,984,000		2,984,000
Non TIF RDA	(11,712,000)		(11,712,000)
Parking Operations Fund	4,878,000		4,878,000
Pay-As-You-Go	2,863,000		2,863,000
Penn Garage	402,000		402,000
Proposed Future RDA Bonds	310,050,000		310,050,000
Proposed Future Resort Tax 1 Bonds	204,500,000		204,500,000
Proposed Future Water & Sewer Bonds	14,476,000		14,476,000
Proposed Parking Bonds	59,500,000		59,500,000
Stormwater Bonds	51,876,000	8,683,928	60,559,928
RDA Garage Fund	2,841,000		2,841,000
Renewal & Replacement Fund	3,119,120		3,119,120
SB Quality of Life Resort Tax Fund - 1%	1,870,000		1,870,000
Sanitation Enterprise Fund	375,000		375,000
South Pointe Capital	14,874,000		14,874,000
W&S GBL Series 2010 CMB Reso 2009-27243	458,000		458,000
Water and Sewer Bonds 200S	0	80,000	80,000
Water and Sewer Enterprise Fund	150,000		150,000
Clean Water State Revolving Loan Fund	7,500,000		7,500,000
Total Appropriation as of 04/15/15	\$ 756,394,000	\$ 11,344,634	\$ 767,738,634

ATTACHMENT B
FY 2014/15 CAPITAL BUDGET
PROGRAMS
Amended 09/02/15

Program Area	Amended 6/10/15	Amended 9/2/15	Revised
Bridges	\$ 283,000	\$ -	\$ 283,000
Community Centers	42,000	-	42,000
Convention Center	522,013,000	-	522,013,000
Environmental	224,000	-	224,000
Equipment	9,405,000	-	9,405,000
General Public Buildings	5,672,000	-	5,672,000
Golf Courses	124,000	-	124,000
Information Technology	1,780,000	-	1,780,000
Monuments	233,000	-	233,000
Parking	833,000	-	833,000
Parking Garages	61,374,214	-	61,374,214
Parking Lots	505,000	-	505,000
Parks	8,159,900	-	8,159,900
Renewal & Replacement	6,677,601	-	6,677,601
Seawalls	254,000	-	254,000
Streets/ Sidewalk Imps	98,379,608	7,014,634	105,394,242
Transit/ Transportation	8,771,000	-	8,771,000
Utilities	31,663,677	4,330,000	35,993,677
Total Appropriation as of 04/15/15	\$ 756,394,000	\$ 11,344,634	\$ 767,738,634

**ATTACHMENT C
FY 2014/15 CAPITAL BUDGET
PROJECTS**

Amended 09/02/15

Capital Project Name	Amended 6/10/15	Amended 9/2/15	Revised Capital Budget
West Avenue / Bay Road Improvements	\$ 34,242,008	\$ 7,014,634	\$ 41,256,642
Sunset Harbor Pump Station Upgrades	8,027,718	4,250,000	12,277,718
Upsizing Under Capacity Water Mains Citywide from Indian Creek Drive to 41st Street	3,035,669	80,000	3,115,669
Total	\$ 45,305,395	\$ 11,344,634	\$ 56,650,029



CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS SEPTEMBER 2, 2015

NOTICE IS HEREBY given that the following public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **September 2, 2015**, at the times listed, or as soon thereafter as the matter can be heard:

10:35 a.m.

An Ordinance Amending Chapter 18 Of The Miami Beach City Code, Entitled "Businesses," By Amending Article VIII, Entitled "Parking Lot," By Amending Division 1, Entitled "Generally," By Amending Section 18-310, Entitled, "Requirements For Issuance Of License," By Requiring A Notarized Letter Before Issuance Of Valet Parking License; By Deleting Section 18-311, Entitled, "Employers And Valet Operators Code Of Conduct," And Creating A New Section 18-311, Entitled "Operation Of Service," By Removing Language That Allowed The Leasing Of Municipal Spaces; By Removing Section 18-312, Entitled, "Operation Of Service," By Deleting Section 18-313, Entitled, "Special Event Permit," By Deleting Section 18-314, Entitled, "Enforcement, Fine Schedule, And Right Of Appeal," By Deleting Section 18-315, Entitled, "Compliance Date," By Amending Division 2, Entitled, "Valet Parking Permits For Use Of Public Property," By Amending Section 18-336, Entitled, "Separate Permit Required," Authorizing Consolidation Of Valet Parking Ramps And Identifying The Types Of Uses For Space Rental Valet Parking; By Amending Section 18-337, Entitled, "Requirements," Which Establishes Submission Standards For A Valet Parking Operational Plan; By Deleting Section 18-339, Entitled, "Cancellation And Revocation," And Creating A New Section 18-339, Entitled, "Private Storage Of Valet Vehicles," Which Requires The Parking Director To Confirm Sufficient Rental Storage Capacity; By Creating A New Section 18-340, Entitled, "Employees And Valet Operators Code Of Conduct" That Establishes The Code Of Conduct Standards For Valet Operators And Their Employees; By Creating A New Section 18-341, Entitled, "Operation Of Service," Which Requires The Identification Of Rental Spaces, Ramping, On-Call Valet Ramps, Storage And Valet Parking Street Furniture; By Creating A New Section 18-342, Entitled, "Exceptions," That Permits Valet Service In Residential Zoned Areas; By Creating A New Section 18-343, Entitled, "Penalties And Enforcement, Fine Schedule, Right Of Appeal," And Further Amending Division 3, Entitled, "Rentals," By Amending Section 18-361, Entitled, "Rental And Operation Of Municipal Parking Spaces," Which Modifies The Permissible Operations Of Public Spaces For Ramping; And The Deletion Of Section 18-362, Entitled, "Rental Of Additional Parking For Storage Of Vehicles," Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Parking Department at 305.673.7505.*

10:40 a.m.

An Ordinance Amending Chapter 2 Of The Code Of The City Of Miami Beach, Entitled "Administration," By Amending Article II, Entitled "City Commission," By Amending Section 2-12, Entitled "Meeting Agendas," By Amending The Requirements And Procedures Relating To City Commission Meetings And Agenda; Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

11:00 a.m.

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Approving, Following Second Reading/Public Hearing, A Development And Ground Lease Agreement, As Authorized, Respectively, Under Section 118-4 Of The City Code, Sections 163.3220 - 163.3243, Florida Statutes, And Section 82-37 Of The City Code, Between The City And Portman Miami Beach, LLC ("Portman"), For The Development Of An 800-Room Convention Headquarter Hotel And Related Facilities, Including Up To 95,000 Square Feet Of Conference And Ballroom Facilities, And Up To 37,400 Square Feet Of Restaurant Facilities (The "Hotel"), On An Approximately 2.65 Acre Site On The Northeast Corner Of 17th Street And Convention Center Drive, Bounded Roughly By The Miami Beach Convention Center To The North, 17th Street To The South, The Filmore Miami Beach At The Jackie Gleason Theater To The East, And Convention Center Drive To The West (The "Leased Property"); Delineating The Conditions For The Design, Construction, Equipping And Operation Of The Hotel On The Leased Property With No City Funding Therefor; Providing For A 99-Year Term Of The Leased Property Once Certain Conditions Are Satisfied; Prohibiting Gambling Establishments On The Leased Property; And Providing For Annual Base Rent To The City, After The Hotel Opens, Of The Greater Of Minimum Fixed Rent Or A Percentage Of The Gross Revenues Of The Hotel, Among Other Rent. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

11:05 a.m.

A Resolution Adopting The Sixth Amendment To The Capital Budget For Fiscal Year 2014/15. *Inquiries may be directed to the Office of Budget & Performance Improvement at 305.673.7510.*

2:00 p.m.

A Resolution Of The Chairperson And Members Of The Miami Beach Redevelopment Agency (RDA), Accepting The Recommendations Of The Finance And Citywide Projects Committee; Waiving The Competitive Bidding Requirement, Finding Such Waiver To Be In The Best Interest Of The RDA; And Approving And Authorizing The Chairperson And Secretary To Execute A Lease Agreement With Artconnection International, Inc. (Tenant), In Connection With The Use Of Suite No. 6 At The Anchor Shops, Located At 100 16th Street, Suite No. 6, Miami Beach, Florida (Premises); Said Lease Having An Initial Term Of Five (5) Years, Commencing On November 12, 2015, With Two Renewal Options (At Tenant's Option), Of Three (3) Years And One (1) Year And 364 Days, Respectively. *Inquiries may be directed to the Office of Tourism, Culture and Economic Development at 305.673.7577.*

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these items are available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach

Ad 1061

THIS PAGE INTENTIONALLY LEFT BLANK

LANDLORD:

Miami Beach Redevelopment Agency, a public body
corporate and politic
1700 Convention Center Drive
Miami Beach, Florida 33139

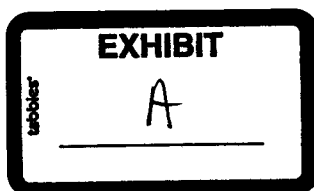
TENANT:

ArtConnection International, Inc.
100 16th Street, Suite 6
Miami Beach, FL 33139

DATE OF EXECUTION:

_____, 2015

**ANCHOR SHOPS AT SOUTH BEACH
RETAIL LEASE**



(i)

LEASE SUMMARY

The following is a summary of basic lease provisions with respect to the Lease. It is an integral part of the Lease, and terms defined or dollar amounts specified in this Summary shall have the meanings or amounts as stated, unless expanded upon in the text of the Lease and its Exhibits, which are attached to and made a part of this Summary.

1. Date of Lease Execution: _____, 2015.
2. "Landlord":
Miami Beach Redevelopment Agency
The Executive Director shall be authorized to act on behalf of Landlord. For purposes of managing this Lease, the Tourism, Culture and Economic Development Director shall be the Executive Director's designee.
3. Landlord's Address:
Miami Beach Redevelopment Agency
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Max Sklar, Tourism, Culture and Economic Development Director

with a copy to:
City of Miami Beach
Miami Beach Redevelopment Agency
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Legal Department
4. "Tenant":
ArtConnection International, Inc.
5. Tenant's Address:
100 16th Street, Suite 6
Miami Beach, FL 33139
6. Premises (section 1.1):
100 16th Street, Suite 6
Miami Beach, FL 33139
As shown on Exhibit "B"
7. Gross Rentable
Area of Premises (section 1.1): Approximately 721 square feet

Retail Space (section 1.1): Approximately 20,639 rentable square feet
8. Tenant's Proportionate Share
(section 2.4) of the Retail Space: 3.493%
9. Permitted Use of
Premises (section 3.1): First-class retail store selling costume jewelry that may be made from or contains jewels and precious metal, but is not considered fine Jewelry (and subject to the prohibited uses described in Exhibit "D" to the Lease)

10. Term of Lease (section 1.1):

"Initial Term of the Lease": Five (5) years
 "Commencement Date": November 12, 2015
 "Rent Commencement Date": November 12, 2015
 "Expiration Date": November 11, 2020
 (subject to further extensions through the exercise of the Renewal Options, pursuant to the terms set forth herein)

"Renewal Options": Two (2) Renewal Options

"First Renewal Option" is for three (3) years, commences November 12, 2020, and expires November 11, 2023.

"Second Renewal Option" is for one (1) year and 364 days, commences November 12, 2023 and expires November 10, 2025.

Tenant must notify Landlord in writing, no later than one hundred and eighty (180) days prior to the expiration of the Initial Term of the Lease or the term of any Renewal Option, as applicable, of its intention to exercise a Renewal Option. At the commencement of each Renewal Option, the Minimum Rent shall be adjusted to the then current Fair Market Rent.

11. "Minimum Rent" (section 2.2):

<u>LEASE YEAR</u>	<u>ANNUAL MINIMUM RENT*</u>	<u>MONTHLY PAYMENT (PLUS SALES TAX)</u>
1	\$44,702	\$3,725.17
2 – End of Initial Term of the Lease	See Note *	See Note *
Renewal Options	See Note *	See Note *

* Beginning on November 12, 2016, and at the beginning of each succeeding Lease Year thereafter during the Initial Term of the Lease and during the term of any subsequent Renewal Options, the Minimum Rent shall be increased annually in increments of the greater of 3% or the Consumer Price Index (CPI) rate change – All Urban Consumers (CPI – U.S. City Average All Items, base year 1982-84 = 100 ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics ("Annual Rent Increase"). The CPI increase calculation shall be determined by multiplying the Minimum Rent then being paid by a fraction, the numerator of which shall be the CPI for the third month–preceding the month of adjustment, and the denominator of which shall be the CPI for the fifteenth month preceding the month of adjustment.

Effective at the commencement of each Renewal Option term, Tenant's Minimum Rent shall be adjusted ("Renewal Option Rent Adjustment"), based upon the fair market rents in effect ("Fair Market Rent").

The Fair Market Rent shall be determined by Landlord, by securing the opinion of an independent and licensed appraiser which will be retained by the Landlord at the Landlord's expense and discretion; however, any Renewal Option Rent Adjustment shall not be less than, the Minimum Rent for the immediately prior Lease Year plus the Annual Rent Increase ("Fair Market Adjustment Procedure"). If Tenant exercises a Renewal Option, Tenant accepts the Fair Market Rent amount.

Minimum Rent shall continue to be payable in monthly installments as otherwise described above until Landlord notifies Tenant of the new monthly Minimum Rent installment amount. Landlord shall attempt to so notify Tenant prior to the commencement of each adjustment date; however, failure of Landlord to timely notify Tenant of the new monthly Minimum Rent installment amount shall not be deemed a waiver by Landlord of the increased rental; the new monthly Minimum Rent amount (or any portion not previously paid) shall be payable, retroactive to the commencement of the new adjustment date, upon notification by Landlord to Tenant of the new monthly Minimum Rent installment amount.

- | | |
|---|---|
| 12. Percentage Rental (section 2.3): | N/A |
| 13. Prepaid Rent (section 2.2): | \$4,552.32, including applicable sales tax (due upon execution of Lease). |
| 14. Security Deposit (section 2.7): | \$8,509.02 (due upon execution of Lease), less any existing deposit from the previous lease. |
| 15. Cost Pass-Throughs
(Operating Expenses) (section 2.4): | Proportionate Share of Property Taxes, Insurance, and Common Area Maintenance of the Anchor Shops and Parking Garage. |

<u>LEASE YEAR</u>	<u>OPERATING EXPENSES COST PER SQUARE FOOT**</u>	<u>OPERATING EXPENSES MONTHLY/ANNUAL PAYMENT (PLUS SALES TAX)</u>
1	\$8.81	\$529.34/\$6,352.01
2 – End of Lease Term	See Note **	See Note **

The Operating Expenses for the first Lease Year comprise of the following figures:

Insurance	\$ 0.54	\$32.45/\$389.34
Taxes	\$ 7.44	\$447.02/\$5,364.24
CAM	\$ 0.83	\$49.87/\$598.43

** Beginning on November 12, 2016, and at the beginning of each succeeding Lease Year thereafter during the Initial Term of the Lease and during the term of any subsequent Renewal Options, the estimated Operating Expenses for the upcoming Lease Year shall be adjusted, as determined by Landlord in its sole discretion and judgment, to reflect the Tenant's Proportionate Share of Property Taxes, Insurance, and Common Area Maintenance incurred by Landlord during the previous Lease Year ("Operating Expense Adjustment"). Simultaneously with this adjustment, Tenant shall be responsible for paying any difference between the Proportionate Share of estimated Operating Expenses paid by Tenant during the previous Lease Year and the Proportionate Share owed by Tenant in connection with the actual Operating Expenses for the previous Lease Year ("Operating Expense True-Up"). Controllable expenses, hereby defined as all expenses other than property taxes, insurance and utilities shall be capped at no more than a five percent (5%) increase above the previous Lease Year.

Operating Expenses shall continue to be payable in monthly installments as otherwise described above until Landlord notifies Tenant of the new monthly Operating Expense Adjustment installment and True-Up payment. Landlord shall attempt to so notify Tenant prior to the commencement of each Operating Expense Adjustment date and Operating Expense True-Up amount; however, failure of Landlord to timely notify Tenant of said Operating Expense Adjustment/True-Up amounts shall not be deemed a waiver by Landlord of the right to make said Operating Expense Adjustment/True-Up; the new Operating Expense Adjustment or any

sums due pursuant to the Operating Expense True-Up for the previous Lease Year shall be payable, retroactive to the effective date of said adjustment date, upon notification by Landlord to Tenant of the new monthly Operating Expense payment amount and the total True-Up amount due.

16. Comprehensive General Liability Insurance (section 6.1):	\$2,000,000.00
17. Monthly Promotional Charge (section 13.1):	N/A
18. Broker(s) (section 14.12):	N/A
19. Completion Date for Tenant's Work (section 5.1):	N/A
20. Trade Name (section 3.1):	ArtConnection International, Inc.

THIS LEASE (the "Lease"), dated the ____ day of _____, 2015, is made between the **Miami Beach Redevelopment Agency**, a public body corporate and politic (the "Landlord"), and **ArtConnection International, Inc.** (the "Tenant").

RECITALS:

A. The Landlord is the fee simple owner of a certain facility (the "Facility") containing a municipal parking garage and appurtenances containing approximately eight hundred (800) parking spaces (the "Garage") and certain retail space (the "Retail Space") located in an area bounded by Washington and Collins Avenues in the proximity of 16th Street, City of Miami Beach, Metropolitan Dade County, Florida, as more particularly described in Exhibit "A," attached hereto and made a part hereof (the "Land"). The Landlord is the fee simple owner of the Land and the Facility.

B. Landlord and Tenant desire to enter into this Lease for a portion of the Retail Space, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE I. TERM.

1.1 Grant; Term. In consideration of the performance by Tenant of its obligations under this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, for the Term, the "Premises." A site plan showing the location of the Retail Space within the Facility, as well as the location of the Premises within the Retail Space, is attached hereto and made a part hereof as Exhibit "B." The gross rentable area of the Premises and Retail Space shown on the Lease Summary do not represent accurate measurements of the square footage contained in the Premises or the Retail Space, but are mere estimates.

The "Term" of the Lease is the period from the Commencement Date as specified in the Lease Summary, through the Expiration Date, as specified in the Lease Summary.

1.2 Termination for Convenience by Landlord. Notwithstanding any other term or condition in this Lease, and effective no sooner than the commencement of the First Renewal Option Term, Landlord, through its Executive Director, reserves the right to terminate this Lease, for convenience and without cause, and without liability to Landlord, upon providing Tenant with prior written notice, at least 180 days prior to the effective date of the termination for convenience.

1.3 Landlord's Work. Tenant acknowledges and agrees that it is accepting possession of the Premises in as-is condition and that, except as otherwise expressly hereinafter set forth, Landlord has no obligation to furnish, render, or supply any money, work, labor, material, fixture, equipment, or decoration with respect to the Premises. Landlord has caused the completion of the shell improvements to the Retail Space (the "Shell Improvements"), with Tenant responsible for all improvements, including any and all utility impact fees and connection fees, charges, and/or deposits as may be required in connection with Tenant's Work, as hereinafter defined.

1.4 Tenant's Work. Landlord acknowledges that the Tenant has made improvements to the Premises and has had signage installed, pursuant to the terms of a prior lease ("Tenant's Work"), and as such, Tenant's Work is acceptable to Landlord, to the extent that same was properly permitted, and done in compliance with all applicable building codes, and any other Municipal, County, State and Federal laws.

ARTICLE II. RENT.

2.1 Covenant to Pay. Tenant shall pay to Landlord all sums due hereunder from time to time from the Rent Commencement Date without prior demand, together with all applicable Florida sales tax thereon; however, unless otherwise provided in this Lease, payments other than Tenant's regular monthly payments of Minimum Rent shall be payable by Tenant to Landlord within five (5) days following demand. All rent or other charges that are required to be paid by Tenant to Landlord shall be payable at Landlord's address indicated on the Lease Summary. Minimum Rent, and additional rent (which is all sums payable to Landlord other than Minimum Rent) for any "Lease Year" consisting of less than twelve (12) months shall be prorated on a per diem basis, based upon a period of 365 days. "Lease Year" means the twelve (12) full calendar months commencing on the Commencement Date. However, the final Lease Year may contain less than twelve (12) months due to expiration or sooner termination of the Term. Tenant agrees that its covenant to pay rent and all other sums under this Lease is an independent covenant and that all such amounts are payable without counterclaim, set-off, deduction, abatement, or reduction whatsoever, except as expressly provided for in this Lease.

2.2 Minimum Rent. Subject to any escalation which may be provided for in this Lease, Tenant shall pay Minimum Rent for the Term in the initial amount specified in the Lease Summary, which, except for the first installment, shall be payable throughout the Term in equal monthly installments in advance on the first day of each calendar month of each year of the Term, such monthly installments to be in the amounts (subject to escalation) specified in the Lease Summary. The first monthly installment of Minimum Rent shall be due on the date of this Lease. The Minimum Rent described above shall be adjusted during the Term of this Lease as provided in the Lease Summary.

2.3. Percentage Rental. Intentionally Omitted.

2.4 Operating Expenses: Property Taxes, Insurance, and Common Area Maintenance. Tenant shall remit together with regular monthly payments of Minimum Rent, its proportionate share of estimated Operating Expenses for the Premises, as additional rent, as determined by Landlord, in its sole discretion and judgment, including Property Taxes, Insurance, and Common Area Maintenance, in accordance with Section 15 of the Lease Summary, and as more particularly described hereinafter.

Tenant's Proportionate Share means a fraction, the numerator of which is the square footage of rentable space occupied by Tenant, and the denominator of which is the total square footage of rentable area in the Retail Space as determined in Section 8 of the Lease Summary.

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant's Proportionate Share of Operating Expenses shall increase or decrease accordingly.

2.4.1 Property Taxes: Operating Expenses includes Tenant's Proportionate Share of the Retail Space's pro-rata share of the Property Taxes for the Facility.

The term "Property Taxes" shall mean (i) the portion of real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Facility and (ii) any expenses incurred by the Landlord in obtaining a reduction of any such taxes or assessments.

The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

Tenant shall pay its Proportionate Share of the Retail Space's pro-rata share of the Property Taxes for the Facility, as determined by Landlord, in its sole discretion and judgement, based upon the real estate tax bill for the Facility, by determining the ratio of the assessed taxable value (as determined by the Miami-Dade County Property Appraiser's Office) that the Retail Space has to the assessed taxable value of the Facility. If a Property Tax Year ends after the expiration or termination of the term of this Lease,

the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Lease.

2.4.2 Insurance. Operating Expenses shall also include Tenant's Proportionate Share of the Retail Space's insurance costs for the Facility, as determined by the Landlord, in its sole discretion and judgment, to be sufficient to insure and/or self-insure the Facility for hazard, flood, windstorm, and liability insurance for the following calendar year. Tenant acknowledges that Landlord may self-insure for any or all of Landlord's Insurance coverage's, including without limitation liability insurance. The Retail Space's pro-rata share of the insurance cost shall be determined, based upon the ratio that the replacement value of the Retail space has to the replacement value of the Facility. This insurance coverage is in addition to the insurance required pursuant to Article VI, which shall be obtained at Tenant's sole expense and responsibility.

2.4.3 Common Area Maintenance ("CAM"). Operating Expenses shall also include Tenant's Proportionate Share of the Retail Space's pro-rata share of the Facility's CAM (as hereinafter defined) costs, as determined by Landlord, in its sole discretion and judgment, from the Facility's CAM costs. The Retail Space's pro-rata share of the CAM costs shall be determine based upon the ratio that the usable square feet of the Retail Space has to the usable square feet of the Facility.

Common Area Maintenance ("CAM") shall mean the following costs and expenses incurred in operating, repairing, and maintaining the "Common Facilities" (as hereinafter defined) and shall include, without limitation, water service to the Facility, sewer service to the Facility, trash removal from the Facility, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the Common Facilities and the exterior and structural portions of the Facility, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all expenses included in the annual Common Facilities' expenses, provided by Landlord for the common or joint use and/or benefit of the occupants of the Facility, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all Facility areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

2.5 Payment of Personal Property Taxes; Sales Tax Reports. Tenant shall pay, when due, all taxes attributable to the personal property, trade fixtures, business, occupancy, or sales of Tenant or any other occupant of the Premises and to the use of the Retail Space by Tenant or such other occupant. Tenant shall provide Landlord with copies of Tenant's sales tax reports provided to the State of Florida, as and when such reports are provided to the State. Landlord shall have the right to disclose such reports to any person or entity having an interest or prospective interest in the Retail Space.

2.6 Rent Past Due. If any payment due from Tenant shall be overdue more than five (5) days, a late charge of five (5%) percent of the delinquent sum may be charged by Landlord. If any payment due from Tenant shall remain overdue for more than fifteen (15) days, an additional late charge in an amount equal to the lesser of the highest rate permitted by law or one and one-half (1 1/2%) percent per month (eighteen (18%) percent per annum) of the delinquent amount may be charged by Landlord, such charge to be computed for the entire period for which the amount is overdue and which shall be in addition to and not in lieu of the five (5%) percent late charge or any other remedy available to Landlord.

2.7 Security Deposit. Landlord acknowledges receipt of a security deposit in the amount specified on the Lease Summary to be held by Landlord, without any liability for interest thereon, as security for the performance by Tenant of all its obligations under this Lease. Landlord shall be entitled to commingle the security deposit with Landlord's other funds. If Tenant defaults in any of its obligations under this Lease, Landlord may at its option, but without prejudice to any other rights which Landlord may have, apply all or part of the security deposit to compensate Landlord for any loss, damage, or expense sustained by Landlord as a result of such default. If all or any part of the security deposit is so applied, Tenant shall restore the security deposit to its original amount on demand of Landlord. Within thirty (30) days following termination of this Lease, if Tenant is not then in default, the security deposit will be returned by Landlord to Tenant.

2.8 Landlord's Lien. To secure the timely construction and installation of all improvements to the Premises by tenant and to secure the payment of all rent and other sums of money due and to become due hereunder and the faithful performance of this Lease by Tenant, Tenant hereby gives to Landlord an express first and prior contract lien and security interest on all property now or hereafter acquired (including fixtures, equipment, chattels, and merchandise) which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property. Such property shall not be removed there from without the written consent of Landlord until all arrearages in rental and other sums of money then due to Landlord hereunder shall first have been paid; provided, Tenant may operate its business in the ordinary course and the removal of merchandise from the Premises by customers of Tenant shall not be a default under this section. All exemption laws are hereby waived in favor of said lien and security interest. This lien and security interest is given in addition to Landlord's statutory lien and shall be cumulative thereto. Landlord shall, in addition to all of its rights hereunder, also have all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State in which the Premises is located. To the extent permitted by law, this Lease shall constitute a security agreement under Article 9 of the Florida Uniform Commercial Code.

ARTICLE III. USE OF PREMISES.

3.1 Permitted Use. The Premises shall be used and occupied only for the sale at retail of goods or services as specified in the Lease Summary. The business of Tenant in the Premises shall be carried on under the Trade Name specified in Section 20 of the Lease Summary and under no other name unless approved by Landlord in writing. Tenant shall carry on its business on the Premises in a reputable manner and shall not do, omit, permit, or suffer to be done or exist upon the Premises anything which shall result in a nuisance, hazard, or bring about a breach of any provision of this Lease or any applicable municipal or other governmental law or regulation, or would otherwise be inconsistent with a first-class retail center or incompatible with retail uses ancillary to a first-class convention center hotel. Tenant shall observe all reasonable rules and regulations established by Landlord from time to time for the Retail Space. The rules and regulations in effect as of the date hereof are attached to and made a part of this Lease as Exhibit "C." Landlord will provide a copy of any amendments to the rules and regulations at least seven (7) days prior to the effective date of any such amendments. Tenant shall display such name as Landlord may from time to time designate for the Retail Space in its stationery, materials, webpages, or social media sites, relevant to the Premises which is given, visible, available, emailed, or any way communicated to customers of Tenant. Tenant shall promote such name in any advertisements or promotional material published, initiated, or controlled by Tenant in regard only to its business from the Premises. In the event a name is designated by the Landlord, Tenant shall either be permitted to finish distributing and displaying any advertisements or promotional material, or Landlord shall reimburse Tenant for comparable replacement of said advertisements and promotional materials that were invoiced prior to Tenant receiving written Notice from Landlord of such name to be advertised and promoted by Tenant. The names for the Retail Space and the project of which the Retail Space is a part, which Landlord may from time to time adopt, and every name or mark adopted by Landlord in connection with the Retail Space shall be used by Tenant only in association with the business carried on in the Premises during the Term and Tenant's use thereof shall be subject to such reasonable regulation as Landlord may from time to time impose.

3.2 Compliance with Laws. The Premises shall be used and occupied in a safe, careful, and proper manner so as not to contravene any present or future laws, rules, regulations, constitutions, orders, ordinances, charters, statutes, codes, executive orders, and requirements of all governmental authorities having jurisdiction over the Premises or any street, road, avenue, or sidewalk comprising a part of, or lying in front of, the Premises or any vault in or under the Premises (including, without limitation, any of the foregoing relating to handicapped access or parking, the local Facility codes, and the laws, rules, regulations, orders, ordinances, statutes, codes, and requirements of any applicable Fire Rating Bureau or other body exercising similar functions), the temporary and/or permanent certificate or certificates of occupancy issued for the Premises as then in force, and any and all provisions and requirements of any property, casualty, or other insurance policy required to be carried by Tenant under this Lease. If due to Tenant's use of the Premises, repairs, improvements, or alterations are necessary to comply with any of the foregoing, Tenant shall pay the entire cost thereof.

3.3 Signs. Tenant, at Tenant's expense, shall erect and maintain identification signage upon the storefront of the Premises. The design and specification of such signage shall be subject to Landlord's approval and such design and specification (including camera-ready artwork) shall be submitted for Landlord's prior approval. Except with the prior written consent of Landlord, Tenant shall not erect, install, display, inscribe, paint, or affix any signs, lettering, or advertising medium upon or above any exterior portion of the Premises or in or on Tenant's storefront or storefront window.

3.4 Environmental Provisions.

(a) Tenant shall not knowingly incorporate into, use, or otherwise place or dispose of at the Premises or in the Retail Space (or allow others to incorporate into, use, or otherwise place or dispose of at the Premises or in the Retail Space) any Hazardous Materials, as hereinafter defined, unless (i) such Hazardous Materials are for use in the ordinary course of business (i.e., as with office or cleaning supplies), (ii) notice of and a copy of the current material safety data sheet is provided to Landlord for each such Hazardous Material (except for Hazardous Materials used by Tenant in the ordinary course of business (i.e., as with office or cleaning supplies)), and (iii) such materials are handled and disposed of in accordance with all applicable governmental laws, rules, and regulations. If Landlord or Tenant ever has knowledge of the presence in the Premises or the Retail Space of Hazardous Materials which affect the Premises, such party shall notify the other thereof in writing promptly after obtaining such knowledge. For purposes of this Lease, "Hazardous Materials" shall mean: (a) petroleum and its constituents; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes," or words of similar import under any applicable governmental laws, rules, and regulations including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9061 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and Florida Statutes, Chapters 376 and 403; and (d) any other chemical, material, gas, or substance, the exposure to or release of which is regulated by any governmental or quasi-governmental entity having jurisdiction over the Retail Space or the operations thereon.

(b) If Tenant or its employees, agents, or contractors shall ever violate the provisions of subsection (a), above, then Tenant shall clean-up, remove, and dispose of the Hazardous Material causing the violation, in compliance with all applicable governmental standards, laws, rules, and regulations and repair any damage to the Premises or Retail Space within such period of time as may be reasonable under the circumstances after written notice by Landlord, provided that such work shall commence not later than thirty (30) days from such notice and be diligently and continuously carried to completion by Tenant or Tenant's designated contractors. Tenant shall notify Landlord of its method, time, and procedure for any clean-up or removal of Hazardous Materials under this provision; and Landlord shall have the right to require reasonable changes in such method, time, or procedure or to require the same to be done after normal business hours or when the Retail Space is otherwise closed (i.e., holidays) if reasonably required for the protection of other tenants or occupants of the Retail Space.

(c) Tenant agrees to defend, indemnify, and hold harmless Landlord, and the City of Miami Beach (the "City") against any and all claims, costs, expenses, damages, liability, and the like, which Landlord may hereafter be liable for, suffer, incur, or pay arising under any applicable environmental laws, rules, and regulations and resulting from or arising out of any breach of the covenants contained in this section 3.4, or out of any act, activity, or violation of any applicable environmental laws, rules, and regulations on the part of Tenant, its agents, employees, or assigns. Tenant's liability under this section 3.4 shall survive the expiration or any termination of this Lease.

3.5 Hours; Continued Occupancy. During the Term, Tenant shall conduct its business in the Premises, at a minimum, on all days and during all hours established by Landlord from time to time as store hours for the Retail Space. Tenant may conduct business on the Premises, in addition to the foregoing times, in Tenant's reasonable judgment in order to maximize sales from the Premises, at Tenant's sole expense. However, Landlord shall not be responsible for providing common area or other services during such additional hours. Tenant shall open the whole of the Premises for business to the public, fully fixtured, stocked, and staffed on the Commencement Date, and shall continuously, actively, and diligently carry on the business specified in section 3.1 on the whole of the Premises during the Term, during such hours and upon such days as are herein required, except when prevented from doing so by force majeure. Tenant acknowledges that its continued occupancy of the Premises and the regular conduct of its business therein are of utmost importance to neighboring tenants and to Landlord in the renting of space in the Retail Space, the renewal of other leases therein, the efficient and economic supply of services and utilities. Tenant acknowledges that Landlord is executing this Lease in reliance thereupon and that the same is a material element inducing Landlord to execute this Lease. Tenant shall not keep or display any merchandise on or otherwise obstruct the common areas and shall not sell, advertise, conduct, or solicit business anywhere within the Retail Space other than in the Premises. Tenant shall ship and receive supplies, fixtures, equipment, furnishings, wares, and merchandise only through the appropriate service and delivery facilities provided by Landlord; and shall not park its trucks or other delivery vehicles or allow suppliers or others making deliveries to or receiving shipments from the Premises to park in the parking areas, except in those parts thereof as may from time to time be allocated by Landlord for such purpose. Tenant shall maintain available a substantial stock of goods, wares, and merchandise adequate to ensure successful operation of Tenant's business, and shall employ and maintain sales and other personnel sufficient at all times for proper service to customers.

3.6 Prohibited Uses. Notwithstanding any other provisions of this Lease, Tenant shall not use the Premises nor permit them to be used for any of the following purposes: (A) for the sale by Tenant, as its principal business purpose, of any merchandise which Tenant, in the course of its normal business practice, purchases at manufacturers' clearances or purchases of ends-of-runs, bankruptcy stock, seconds, or other similar merchandise; (B) for the sale of second-hand goods, war surplus articles, insurance salvage stock, fire sale stock, merchandise damaged by or held out to be damaged by fire, except merchandise damaged by fire or smoke occurring in the Retail Space, and then only for thirty (30) days after the date of any such damage; (C) as an auction or flea market; (D) for a bankruptcy sale or going-out-of-business sale or liquidation sale or any similar sale, unless Tenant is in fact in bankruptcy or is going out of business or is in liquidation, in which case such sale shall not continue beyond thirty (30) days; (E) a business primarily used for an order office, mail order office, or catalogue store; or (F) any business in which Tenant is engaged in intentionally deceptive or fraudulent advertising or selling practices or any other act or business practice contrary to honest retail practices.

3.7 Intentionally Omitted.

3.8 Exclusive Use. So long as Tenant is in actual occupancy of the Premises and using the Premises for the permitted use set forth in the Lease Summary, Landlord agrees not to enter into any leases for space in the Retail Space with persons or entities whose primary business at the Retail Space would be the sale of costume jewelry that may be made from or contains jewels and precious metal, but is not considered fine jewelry.

ARTICLE IV. ACCESS AND ENTRY.

4.1 Right of Examination. Landlord shall be entitled at all reasonable times and upon reasonable notice (but no notice is required in emergencies) to enter the Premises to examine them if Landlord reasonably believes that Tenant is not complying with any of its obligations hereunder; to make such repairs, alterations, or improvements thereto as Landlord considers necessary or reasonably desirable; to have access to underfloor facilities and access panels to mechanical shafts and to check, calibrate, adjust, and balance controls and other parts of the heating, air conditioning, ventilating, and climate control systems. Landlord reserves to itself (and others acting on behalf of Landlord including, without limitation, the City) the right to install, maintain, use, and repair pipes, ducts, conduits, vents, wires, and other installations leading in, through, over, or under the Premises and for this purpose, Landlord may take all material into and upon the Premises which is required therefor. Tenant shall not unduly obstruct any pipes, conduits, or mechanical or other electrical equipment so as to prevent reasonable access thereto. Landlord reserves the right to use all exterior walls and roof area. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises and Tenant's property.

4.2 Right to Show Premises. Landlord and its agents have the right to enter the Premises at all reasonable times and upon reasonable notice to show them to prospective purchasers, lenders, or anyone having a prospective interest in the Retail Space, and, during the last six (6) months of the Term (or the last six (6) months of any renewal term if this Lease is renewed), to show them to prospective tenants. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to minimize interference with Tenant's use and enjoyment of the Premises and Tenant's property.

ARTICLE V. MAINTENANCE, REPAIRS, AND ALTERATIONS.

5.1. (Intentionally Omitted)

5.2 Maintenance and Repairs by Landlord. It is hereby acknowledged and agreed that Landlord shall maintain and repair the base building, mechanical and electrical systems, and roof and foundation of the Retail Space. Tenant will notify in writing of any necessary repairs that are the obligation of Landlord. Landlord shall not be responsible for any damages caused to Tenant by reason of failure of any equipment or facilities serving the Retail Space or delays in the performance of any work for which the Landlord is responsible to perform pursuant to this Lease. Notwithstanding any other provisions of this Lease, if any part of the Retail Space is damaged or destroyed or requires repair, replacement, or alteration as a result of the act or omission of Tenant, its employees, agents, invitees, licensees, or contractors, Landlord shall have the right to perform same and the cost of such repairs, replacement, or alterations shall be paid by Tenant to Landlord upon demand. In addition, if, in an emergency, it shall become necessary to make promptly any repairs or replacements required to be made by Tenant, Landlord may re-enter the Premises and proceed forthwith to have the repairs or replacements made and pay the costs thereof. Upon demand, Tenant shall reimburse Landlord for the cost of making the repairs. Landlord shall exercise its rights under this section in a manner so as to minimize any disruption or interference with the operation of Tenant's business and property.

5.3 Maintenance and Repairs by Tenant. Tenant shall, at its sole cost, repair and maintain the Premises exclusive of base Facility mechanical and electrical systems, all to a standard consistent with a first class retail center, with the exception only of those repairs which are the obligation of the Landlord pursuant to this Lease. Without limiting the generality of the foregoing, Tenant is specifically required to maintain, make repairs and to replace as needed (i) the portion of any pipes, lines, ducts, wires, or conduits contained within the Premises; (ii) windows, plate glass, doors, and any fixtures or appurtenances composed of glass (including, without limitation, interior and exterior washing of windows and plate glass; (iii) Tenant's sign; (iv) any heating or air conditioning equipment serving the Premises ("HVAC") (which shall include, without limitation, a preventive maintenance HVAC service contract. Such service contract shall include, without limitation, preventive HVAC maintenance no less than quarterly); and (v) the Premises or the Retail Space when repairs to the same are necessitated by any act or omission of Tenant, or the failure of Tenant to perform its obligations under this Lease. All repair and maintenance performed by Tenant in the Premises shall be performed by contractors or workmen designated or approved by Landlord, which approval shall not be unreasonably withheld or delayed. At the

expiration or earlier termination of the Term, Tenant shall surrender the Premises to Landlord in as good condition and repair as Tenant is required to maintain the Premises throughout the Term, reasonable wear and tear excepted. Tenant shall also furnish, maintain, and replace all electric light bulbs, tubes, and tube casings located within or serving the Premises and Tenant's signage, all at Tenant's sole cost and expense.

5.4 Approval of Tenant's Alterations. No alterations (including, without limitation, improvements, additions, or modifications to the Premises) shall be made by Tenant to the Premises without Landlord's prior written approval, which, as to exterior or structural alterations may be withheld in Landlord's sole discretion. Any alterations by Tenant shall be performed at the sole cost of Tenant, by contractors and workmen approved by Landlord, which approval shall not be unreasonably withheld or delayed, in a good and workmanlike manner, and in accordance with all applicable laws and regulations.

5.5 Removal of Improvements and Fixtures. All leasehold improvements and fixtures (other than unattached, movable trade fixtures which can be removed without damage to the Premises) shall at the expiration or earlier termination of this Lease become Landlord's property. Tenant may, during the Term, in the usual course of its business, remove its trade fixtures, provided that Tenant is not in default under this Lease; and Tenant shall, at the expiration or earlier termination of the Term, at its sole cost, remove such of the leasehold improvements (except for improvements installed by Landlord prior to the Commencement Date) and trade fixtures in the Premises as Landlord shall require to be removed and restore the Premises to the condition existing prior to such removal. Tenant shall at its own expense repair any damage caused to the Retail Space by such removal. If Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of Landlord, become the property of Landlord and may be removed from the Premises and sold or disposed of by Landlord in such manner as it deems advisable without any accounting to Tenant.

5.6 Liens. Tenant shall promptly pay for all materials supplied and work done in respect of the Premises by, through, or under Tenant so as to ensure that no lien is recorded against any portion of the Retail Space or against Landlord's or Tenant's interest therein. If a lien is so recorded, Tenant shall discharge it promptly by payment or bonding. If any such lien against the Retail Space or Landlord's interest therein is recorded and not discharged by Tenant as above required within fifteen (15) days following written notice to Tenant, Landlord shall have the right to remove such lien by bonding or payment and the cost thereof shall be paid immediately from Tenant to Landlord. Landlord and Tenant expressly agree and acknowledge that no interest of Landlord in the Premises or the Retail Space shall be subject to any lien for improvements made by Tenant in or for the Premises, and Landlord shall not be liable for any lien for any improvements made by Tenant, such liability being expressly prohibited by the terms of this Lease. In accordance with applicable laws of the State of Florida, Landlord has filed in the public records of Dade County, Florida, a public notice containing a true and correct copy of this paragraph, and Tenant hereby agrees to inform all contractors and material suppliers performing work in or for or supplying materials to the Premises of the existence of said notice.

5.7 Utilities. Tenant shall pay to Landlord, or as Landlord directs, all gas, electricity, water, and other utility charges, applicable to the Premises as separately metered. Additionally, if at Landlord's discretion, Landlord provides waste collection services inclusive of recycling and any additional services deemed necessary by Landlord to maintain the trash room for the Retail Space, Tenant shall pay its proportionate share of said service(s). Tenant shall, at its own cost, install, maintain and repair, as required, its electrical meter for the Premises. In addition, Tenant's electrical equipment and lighting shall be restricted to that equipment and lighting which individually does not have a rated capacity and/or design load greater than the rated capacity and/or design load of the Retail Space. If Tenant's consumption of electrical services exceeds either the rated capacity and/or design load of the Retail Space, then Tenant shall remove the equipment and/or lighting to achieve compliance within ten (10) days after receiving written notice from Landlord, or such equipment and/or lighting may remain in the Premises, so long as (a) Tenant shall pay for all costs of installation and maintenance of submeters, wiring, air-conditioning, and other items required by Landlord, in Landlord's reasonable discretion, to accommodate Tenant's excess design loads and capacities; and (b) Tenant shall pay to Landlord, within thirty (30) days after rendition of a bill, the cost of the excess consumption of electrical service at the rates charged to Landlord by Florida Power & Light, which shall be in accordance with any applicable laws.

ARTICLE VI. INSURANCE AND INDEMNITY.

6.1 Tenant's Insurance. Tenant shall, throughout the Term (and any other period when Tenant is in possession of the Premises), maintain at its sole cost the following insurance:

(A) All risks property insurance, containing a waiver of subrogation rights which Tenant's insurers may have against Landlord and against those for whom Landlord is in law responsible including, without limitation, its directors, officers, agents, and employees, and (except with respect to Tenant's chattels) incorporating a standard New York mortgagee endorsement (without contribution). Such insurance shall insure property of every kind owned by Tenant in an amount not less than the full replacement cost thereof (new), with such cost to be adjusted no less than annually. Such policy shall include as additional insureds Landlord and its affiliates and any mortgagee of Landlord, the City, and any mortgagee of the Landlord in connection with a mortgage on the Facility.

(B) Comprehensive general liability insurance. Such policy shall contain inclusive limits per occurrence of not less than the amount specified in the Lease Summary; provide for severability of interests; and include as additional insureds Landlord and its affiliates and any mortgagee of Landlord, the City, and any mortgagee of Landlord in connection with a mortgage on the Facility.

(C) Worker's compensation and employer's liability insurance in compliance with applicable legal requirements.

(D) Business interruption insurance, sufficient to insure Tenant for no less than one (1) full year of loss of business, with the Landlord named thereon as loss payee to the extent permitted by applicable law.

(E) Any other form of insurance which Tenant or Landlord, acting reasonably, requires from time to time in form, in amounts, and for risks against which a prudent tenant would insure, but in any event not less than that carried by comparable retail establishments in Dade County, Florida.

All policies referred to above shall: (i) be taken out with insurers licensed to do business in Florida and reasonably acceptable to Landlord; (ii) be in a form reasonably satisfactory to Landlord; (iii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Landlord or any mortgagee of Landlord; (iv) contain an undertaking by the insurers to notify Landlord by certified mail not less than thirty (30) days prior to any material change, cancellation, or termination, and (v) with respect to subsection (A), contain replacement cost, demolition cost, and increased cost of construction endorsements. Certificates of insurance on Landlord's standard form or, if required by a mortgagee, copies of such insurance policies certified by an authorized officer of Tenant's insurer as being complete and current, shall be delivered to Landlord promptly upon request. If Tenant fails to take out or to keep in force any insurance referred to in this section 6.1, or should any such insurance not be approved by either Landlord or any mortgagee, and Tenant does not commence and continue to diligently cure such default within two (2) business days after written notice by Landlord to Tenant specifying the nature of such default, then Landlord has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of Tenant and all outlays by Landlord shall be paid by Tenant to Landlord as additional rent without prejudice to any other rights or remedies of Landlord under this Lease. Tenant shall not keep or use in the Premises any article which may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises or the Retail Space.

6.2 Loss or Damage. Tenant acknowledges that the Landlord will be performing any maintenance and repairs required of Landlord hereunder. Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Retail Space or damage to property of Tenant or of others located on the Premises or elsewhere in the Retail Space, nor shall it be responsible for any loss of or damage to any property of Tenant or others from any cause, unless such death, injury, loss, or damage results from the gross negligence or willful misconduct of Landlord. Without limiting the generality of the foregoing, Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, falling ceiling tile, falling fixtures, steam, gas, electricity, water, rain, flood, or leaks from any part of the Premises or from the pipes, sprinklers, appliances, plumbing works, roof, windows, or subsurface of any floor or ceiling of the Retail

Space or from the street or any other place or by dampness, or by any other cause whatsoever, unless resulting from the gross negligence or willful misconduct of Landlord. Tenant agrees to indemnify Landlord and hold it harmless from and against any and all loss (including loss of Minimum Rent and additional rent payable in respect to the Premises), claims, actions, damages, liability, and expense of any kind whatsoever (including attorneys' fees and costs at all tribunal levels), unless caused by the gross negligence or willful misconduct of Landlord, arising from any occurrence in, upon, or at the Premises, or the occupancy, use, or improvement by Tenant or its agents or invitees of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant its agents, employees, and invitees or by anyone permitted to be on the Premises by Tenant.

6.3 Waiver of Subrogation. Landlord and Tenant each hereby waives on behalf of itself and its insurers (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise) any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, or employees, for any loss or damage that may occur to the Premises, or any improvements thereto or the Retail Space, or any improvements thereto, or any personal property of such party therein, by reason of fire, the elements, or any other causes which are, or could or should be insured against under the terms of the standard fire and extended coverage insurance policies referred to in this Lease, regardless of whether such insurance is actually maintained and regardless of the cause or origin of the damage involved, including negligence of the other party hereto, its agents, officers, or employees. Landlord and Tenant shall each obtain from their respective insurers, under all policies of fire, theft, public liability, worker's compensation, and other insurance maintained by either of them at any time during the term hereof insuring or covering the Retail Space or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party.

6.4 Indemnification. Tenant shall indemnify and hold harmless the Landlord and the City of Miami Beach, and their respective officers, employees, agents and instrumentalities (collectively "Indemnitees") from any and all liability, losses or damages, including attorneys' fees and costs of defense, which Indemnitees may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Lease by the Tenant or its employees, agents, servants, partners principals or subcontractors, or relating to or resulting from the operation of Tenant's business at the Premises. Tenant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of any of the Indemnitees, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and hold harmless and defend Indemnitees as herein provided.

ARTICLE VII. DAMAGE AND DESTRUCTION.

7.1 Damage to Premises. Tenant acknowledges that if the Premises are partially or totally destroyed due to fire or other casualty, any repairs to the Facility of the damaged portions of the Retail Space will be performed by Landlord and in any event only to the extent that Landlord is required to repair or rebuild the Retail Space. If Landlord repairs or rebuilds, Minimum Rent shall abate proportionately to the portion of the Premises, if any, rendered untenantable from the date of destruction or damage until the repairs have been substantially completed. Upon being notified that the repairs have been substantially completed, Tenant shall diligently perform all other work required to fully restore the Premises for use in Tenant's business, in every case at Tenant's cost and without any contribution to such cost by Landlord, whether or not Landlord has at any time made any contribution to the cost of supply, installation, or construction of leasehold improvements in the Premises. Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. If all or any part of the Premises shall be damaged by fire or other casualty and the fire or other casualty is caused by the fault or neglect of Tenant or Tenant's agents, guest, or invitees, rent and all other charges shall not abate.

7.2 Termination for Damage. Notwithstanding section 7.1, if damage or destruction which has occurred to the Premises or the Retail Space is such that in the reasonable opinion of Landlord such reconstruction or repair cannot be completed within one hundred twenty (120) days of the happening of the damage or destruction. Landlord may, at their option, terminate this Lease on notice to Tenant given within thirty (30) days after such damage or destruction and Tenant shall immediately deliver vacant possession of the Premises in accordance with the terms of this Lease.

In addition, if Landlord undertakes the reconstruction or repair, and does not complete same within nine (9) months after the date of the fire or other casualty (subject to the time required to prepare plans for reconstruction, to obtain Facility permits, to receive distribution of insurance proceeds, and to complete the likely contract bidding process and all other relevant factors, but not to exceed an additional ninety (90) days), then Tenant shall have the right to terminate this Lease by written notice to Landlord delivered within thirty (30) days after the expiration of such nine (9) month period (or as extended), whereupon both parties shall be relieved of all further obligations hereunder, except as otherwise expressly set forth herein.

ARTICLE VIII. ASSIGNMENT, LEASES, AND TRANSFERS.

8.1 Transfer by Tenant. Tenant shall not enter into, consent to, or permit any Transfer, as hereinafter defined, without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole and absolute discretion for any reason or for no reason. For purposes of this Lease, "Transfer" means an assignment of this Lease in whole or in part; the execution of a management agreement relating to all or any part of the Premises; a sublease of all or any part of the Premises; any transaction whereby the rights of Tenant under this Lease or to the Premises are transferred to another; any mortgage or encumbrance of this Lease or the Premises or any part thereof or other arrangement under which either this Lease or the Premises become security for any indebtedness or other obligations; and if Tenant is a corporation or a partnership, the transfer of a controlling interest in the stock of the corporation or partnership interests, as applicable. If there is a permitted Transfer, Landlord may collect rent or other payments from the transferee and apply the net amount collected to the rent or other payments required to be paid pursuant to this Lease but no acceptance by Landlord of any payments by a transferee shall be deemed a waiver of any provisions hereof regarding Tenant. Notwithstanding any Transfer, Tenant shall not be released from any of its obligations under this Lease. Landlord's consent to any Transfer shall be subject to the further condition that if the Minimum Rent and additional rent pursuant to such Transfer exceeds the Minimum Rent and additional rent payable under this Lease, the amount of such excess shall be paid to Landlord. If, pursuant to a permitted Transfer, Tenant receives from the transferee, either directly or indirectly, any consideration other than Minimum Rent and additional rent for such Transfer, either in the form of cash, goods, or services, Tenant shall, upon receipt thereof, pay to Landlord an amount equivalent to such consideration.

ARTICLE IX. DEFAULT.

9.1 Defaults. A default by Tenant shall be deemed to have occurred hereunder, if and whenever: (i) any Minimum Rent is not paid when due whether or not any notice or demand for payment has been made by Landlord; (ii) any other additional rent is in arrears and is not paid within five (5) days after written demand by Landlord; (iii) Tenant has breached any of its obligations in this Lease (other than the payment of rent) and Tenant fails to remedy such breach within thirty (30) days (or such shorter period as may be provided in this Lease), or if such breach cannot reasonably be remedied within thirty (30) days (or such shorter period), then if Tenant fails to immediately commence to remedy and thereafter proceed diligently to remedy such breach, in each case after notice in writing from Landlord; (iv) Tenant becomes bankrupt or insolvent; (v) any of Landlord's policies of insurance with respect to the Retail Space are canceled or adversely changed as a result of Tenant's use or occupancy of the Premises; or (vi) the business operated by Tenant in the Premises shall be closed by governmental or court order for any reason.

9.2 Remedies. In the event of any default hereunder by Tenant, then without prejudice to any other rights which it has pursuant to this Lease or at law or in equity, Landlord shall have the following rights and remedies, which are cumulative and not alternative:

(A) Landlord may cancel this Lease by notice to Tenant and retake possession of the Premises for Landlord's account, or may terminate Tenant's right to possession of the Premises without terminating this Lease. In either event, Tenant shall then quit and surrender the Premises to Landlord. If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Tenant's liability under all of the provisions of this Lease shall continue notwithstanding any expiration and surrender, or any re-entry, repossession, or disposition hereunder.

(B) Landlord may enter the Premises as agent of Tenant to take possession of any property of Tenant on the Premises, to store such property at the expense and risk of Tenant or to sell or otherwise dispose of such property in such manner as Landlord may see fit without notice to Tenant. Re-entry and removal may be effectuated by summary dispossession proceedings, by any suitable action or proceeding, or otherwise. Landlord shall not be liable in any way in connection with its actions pursuant to this section, to the extent that its actions are in accordance with law.

(C) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease under subsection (A) above, Tenant shall remain liable (in addition to accrued liabilities) to the extent legally permissible for all rent and all of the charges Tenant would have been required to pay until the date this Lease would have expired had such cancellation not occurred. Tenant's liability for rent shall continue notwithstanding re-entry or repossession of the Premises by Landlord. In addition to the foregoing, Tenant shall pay to Landlord such sums as the court which has jurisdiction thereof may adjudge as reasonable attorneys' fees with respect to any successful lawsuit or action instituted by Landlord to enforce the provisions of this Lease.

(D) Landlord may relet all or any part of the Premises for all or any part of the unexpired portion of the Term of this Lease or for any longer period, and may accept any rent then attainable; grant any concessions of rent, and agree to paint or make any special repairs, alterations, and decorations for any new tenant as it may deem advisable in its sole and absolute discretion. Landlord shall be under no obligation to relet or to attempt to relet the Premises, except as expressly set forth below.

(E) If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease under subsection (A) above, and Landlord so elects, the rent hereunder shall be accelerated and Tenant shall pay Landlord damages in the amount of any and all sums which would have been due for the remainder of the Term (reduced to present value using a discount factor equal to the stated prime lending rate on the date of Tenant's default by Landlord's then existing mortgagee or, if there is no mortgagee, by Citibank, N.A., New York). Prior to or following payment in full by Tenant of such discounted sum promptly upon demand, Landlord shall use good faith efforts to relet the Premises. If Landlord receives consideration as a result of a reletting of the Premises relating to the same time period for which Tenant has paid accelerated rent, such consideration actually received by Landlord, less any and all of Landlord's cost of repairs, alterations, additions, redecorating, and other expenses in connection with such reletting of the Premises, shall be a credit against such discounted sum, and such discounted sum shall be reduced if not yet paid by Tenant as called for herein, or if Tenant has paid such discounted sum, such credited amount shall be repaid to Tenant by Landlord (provided said credit shall not exceed the accelerated amount).

(F) Landlord may remedy or attempt to remedy any default of Tenant under this Lease for the account of Tenant and to enter upon the Premises for such purposes. No notice of Landlord's intention to perform such covenants need be given Tenant unless expressly required by this Lease. Landlord shall not be liable to Tenant for any loss or damage caused by the reasonable acts of Landlord in remedying or attempting to remedy such default and Tenant shall pay to Landlord all expenses incurred by Landlord in connection with remedying or attempting to remedy such default. Any expenses incurred by Landlord shall accrue interest from the date of payment by Landlord until repaid by Tenant at the highest rate permitted by law.

9.3 Costs. Tenant shall pay to Landlord on demand all costs incurred by Landlord, including attorneys' fees and costs at all tribunal levels, incurred by Landlord in enforcing any of the obligations of Tenant under this Lease. In addition, upon any default by Tenant, Tenant shall be also liable to Landlord for the expenses to which Landlord may be put in re-entering the Premises; repossessing the Premises; painting, altering, or dividing the Premises; combining the Premises with an adjacent space for any new tenant; putting the Premises in proper

repair; protecting and preserving the Premises by placing watchmen and caretakers therein; reletting the Premises (including attorneys' fees and disbursements, marshall's fees, and brokerage fees, in so doing); and any other expenses reasonably incurred by Landlord.

9.4 Additional Remedies; Waiver. The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now and hereinafter provided by law. All rights and remedies shall be cumulative and non-exclusive of each other. No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

9.5 Default by Landlord. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages or injunction, but prior to any such action Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall have a period of thirty (30) days following the date of such notice in which to cure such default (provided, however, that if such default reasonably requires more than thirty (30) days to cure, Landlord shall have a reasonable time to cure such default, provided Landlord commences to cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion). Notwithstanding any provision of this Lease, Landlord shall not at any time have any personal liability under this Lease. In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then-owned by Landlord in the Retail Space, and in no event shall any deficiency judgment be sought or obtained against Landlord. It is expressly understood that the obligations of Landlord under this Lease are solely corporate obligations, and that, except for conversion, fraud, or willful misconduct, no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, or employees, as such, of the Landlord, or of any successor corporation, or any of them, under or by reason of the obligations, covenants, or agreements of Landlord contained in this Lease or implied therefrom; and, except for conversion, fraud, or willful misconduct, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Lease or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Lease.

ARTICLE X. ESTOPPEL CERTIFICATE; SUBORDINATION.

10.1 Estoppel Certificate. Within ten (10) days after written request by Landlord, Tenant shall deliver in a form supplied by Landlord, an estoppel certificate to Landlord as to the status of this Lease, including whether this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements); the amount of Minimum Rent and additional rent then being paid and the dates to which same have been paid; whether or not there is any existing or alleged default by either party with respect to which a notice of default has been served, or any facts exist which, with the passing of time or giving of notice, would constitute a default and, if there is any such default or facts, specifying the nature and extent thereof; and any other matters pertaining to this Lease as to which Landlord shall request such certificate. Landlord, and any prospective purchaser, lender, or ground lessor shall have the right to rely on such certificate.

10.2 Subordination; Attornment. This Lease and all rights of Tenant shall be subject and subordinate to any and all mortgages, security agreements, or like instruments resulting from any financing, refinancing, or collateral financing (including renewals or extensions thereof), and to any and all ground leases, made or arranged by Landlord of its interests in all or any part of the Retail Space, from time to time in existence against the Retail Space, whether now existing or hereafter created. Such subordination shall not require any further instrument to evidence such subordination. However, on request, Tenant shall further evidence its agreement to subordinate this Lease and its rights under this Lease to any and all documents and to all advances made under such documents. The form of such subordination shall be made as required by Landlord, its lender, ground lessor, the City. Tenant shall, if requested by Landlord, or a mortgagee, owner, or purchaser, or by any person succeeding to the interest of such mortgagee, owner, or purchaser, as the result of the enforcement of the remedies provided by law or the applicable instrument held by Landlord, such mortgagee, owner, or purchaser, automatically attorn to and become the tenant of Landlord or any such mortgagee, owner, purchaser, or successor-in-interest, without any change in the terms or other provisions of this Lease; provided, however, that Landlord, said mortgagee, owner, purchaser, or successor shall not be bound by (a) any payment of rent or

additional rent for more than one (1) month in advance, or (b) any security deposit or the like not actually received by Landlord, such mortgagee, owner, or purchaser, or successor, or (c) any amendment or modification in this Lease made without the consent of Landlord, such mortgagee, owner, purchaser, or successor, or (d) any construction obligation, free rent, or other concession or monetary allowance, or (e) any set-off, counterclaim, or the like otherwise available against Landlord, or (f) any act or omission of any prior landlord (including Landlord). Upon request by Landlord, said mortgagee, owner, or purchaser, or successor, Tenant shall execute and deliver an instrument or instruments confirming its attornment.

Notwithstanding the foregoing, any such subordination of this Lease shall be conditioned on the Landlord obtaining a nondisturbance agreement in favor of Tenant from all mortgagees and ground lessors regarding any financings or over leases entered into by Landlord with respect to the Retail Space, and no subordination shall be effective without a corresponding nondisturbance agreement.

ARTICLE XI. CONTROL OF RETAIL SPACE BY LANDLORD.

11.1 Use and Maintenance of Common Areas. Tenant and those doing business with Tenant for purposes associated with Tenant's business on the Premises, shall have a non-exclusive license to use the common areas for their intended purposes during normal business hours in common with others entitled thereto and subject to any rules and regulations imposed by Landlord. Landlord shall use reasonable efforts to keep the common areas in good repair and condition and shall clean the common areas when necessary. Tenant acknowledges that any common areas of the Retail Space shall at all times be under the exclusive control and management of Landlord. For purposes of this Lease, "common areas" shall mean those areas, facilities, utilities, improvements, equipment, and installations of the Retail Space which serve or are for the benefit of tenants of more than one component of the Retail Space and which are not designated or intended by Landlord to be leased, from time to time, or which are provided or designated from time to time by Landlord and/or the City for the benefit or use of all tenants in the Retail Space, their employees, customers, and invitees, in common with others entitled to the use or benefit of same. Tenant acknowledges that the Garage portion of the Facility is not a part of the Retail Space, and that Tenant has no right or license to use the Garage pursuant to this Lease. Any use by Tenant or its invitees of the Garage is subject to the rules and regulations in connection therewith imposed by Landlord (or successor owner) and/or the operator of the Garage. No portion of the garage is under Landlord's control or supervision, and Landlord shall not be liable for any damage to automobiles of any nature whatsoever to, or any theft of, automobiles or other vehicles or the contents thereof, while in or about the Garage. Additionally, Tenant acknowledges that although the Garage has 800 available parking spaces, the Garage is subject to the following Garage Easement Agreements: 1. Lowe's Hotel Garage Easement Agreement, dated as of September 20, 1996 ("Lowe's Garage Easement Agreement"), recorded in Official Records Book 17362, at Page 130, of the Public Records of Miami-Dade County, Florida; and 2. The Garage Easement Agreement between RDP Royal Palm Hotel Limited partnership and Miami Beach Redevelopment Agency, dated as of May 28, 1998 and recorded in O.R. Book 18170, Page 1082, of the Public Records of Miami-Dade County, Florida. These Garage Easement Agreements, if exercised simultaneously by both Grantees, to the fullest extent possible, have the effect of reducing the available parking spaces at the Garage for use by the general public (including monthly and daily parking users) from 800 to approximately 66 spaces.

11.2 Alterations by Landlord. Landlord and/or the City may (but shall not be obligated to) (i) alter, add to, subtract from, construct improvements on, re-arrange, and construct additional facilities in, adjoining, or proximate to the Retail Space; (ii) relocate the facilities and improvements in or comprising the Retail Space or erected on the Land; (iii) do such things on or in the Retail Space as required to comply with any laws, by-laws, regulations, orders, or directives affecting the Land or any part of the Retail Space; and (iv) do such other things on or in the Retail Space as Landlord and/or the City, in the use of good business judgment determines to be advisable, provided that notwithstanding anything contained in this section 11.2, access to the Premises shall be available at all times. Landlord shall not be in breach of its covenants for quiet enjoyment or liable for any loss, costs, or damages, whether direct or indirect, incurred by Tenant due to any of the foregoing; provided, Landlord shall exercise its rights under this section in a manner so as to minimize any disruption or interference with the operation of Tenant's business and property.

11.3 Tenant Relocation. Landlord shall have the right, at any time upon sixty (60) days' written notice to Tenant, to relocate Tenant into other space within the Retail Space comparable to the Premises. Upon such relocation, such new space shall be deemed the Premises and the prior space originally demised shall in all respects be released from the effect of this Lease. If Landlord elects to relocate Tenant as above described, (i) the new space shall contain approximately the same as, or greater usable area than the original space, (ii) Landlord shall improve the new space, at Landlord's sole cost, to at least the standards of the original space, (iii) Landlord shall pay the reasonable costs of moving Tenant's trade fixtures and furnishings from the original space to the new space, (iv) as total compensation for all other costs, expenses, and damages which Tenant may suffer in connection with the relocation, including but not limited to, lost profit or business interruption, no Minimum Rent shall be due or payable for the first two (2) full calendar months of Tenant's occupancy of the new space, and Landlord shall not be liable for any further indirect or special expenses of Tenant resulting from the relocation, (v) Minimum Rent and all other charges hereunder shall be the same for the new space as for the original space, notwithstanding that the new space may be larger than the original space, and (vi) all other terms of this Lease shall apply to the new space as the Premises, except as otherwise provided in this paragraph.

ARTICLE XII. CONDEMNATION.

12.1 Total or Partial Taking. If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purposes leased hereunder, shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier ("Taking Date"), whereupon the rent and all other charges shall be paid up to the Taking Date with a proportionate refund by Landlord of any rent and all other charges paid for a period subsequent to the Taking Date. If less than the whole of the Premises, or less than such portion thereof as will make the Premises unusable for the purposes leased hereunder, the Term shall cease only as to the part so taken as of the Taking Date, and Tenant shall pay rent and other charges up to the Taking Date, with appropriate credit by Landlord (toward the next installment of rent due from Tenant) of any rent or charges paid for a period subsequent to the Taking Date. Minimum Rent and other charges payable to Landlord shall be reduced in proportion to the amount of the Premises taken.

12.2 Award. All compensation awarded or paid upon a total or partial taking of the Premises or Retail Space including the value of the leasehold estate created hereby shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant's leasehold interest. However, nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant and for Tenant's moving expenses; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord's award or the award of any mortgagee.

ARTICLE XIII. PROMOTION.

13.1 Promotional Fund; Merchants' Association. Intentionally Omitted.

ARTICLE XIV. GENERAL PROVISIONS.

14.1 Delay. Whenever a period of time is herein prescribed for the taking of any action by Landlord or Tenant, as applicable, Landlord or Tenant, as applicable, shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of Landlord or Tenant, as applicable. The foregoing shall not apply to any payments of money due under this Lease.

14.2 Holding Over. If Tenant remains in possession of the Premises after the end of the Term without having executed and delivered a new lease or an agreement extending the Term, there shall be no tacit renewal of this Lease or the Term, and Tenant shall be deemed to be occupying the Premises as a Tenant from month to month at a monthly Minimum Rent payable in advance on the first day of each month equal to twice the monthly amount of Minimum Rent payable during the last month of the Term, and otherwise upon the same terms as are set forth in this Lease, so far as they are applicable to a monthly tenancy.

14.3 Waiver; Partial Invalidity. If Landlord excuses or condones any default by Tenant of any obligation under this Lease, this shall not be a waiver of such obligation in respect of any continuing or subsequent default and no such waiver shall be implied. All of the provisions of this Lease are to be construed as covenants even though not expressed as such. If any provision of this Lease is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease and the remaining provisions of this Lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease.

14.4 Recording. Neither Tenant nor anyone claiming under Tenant shall record this Lease or any memorandum hereof in any public records without the prior written consent of Landlord.

14.5 Notices. Any notice, consent, or other instrument required or permitted to be given under this Lease shall be in writing and shall be delivered in person, or sent by certified mail, return receipt requested, or overnight express mail courier, postage prepaid, addressed (i) if to Landlord, at the address set forth in the Lease Summary; and (ii) if to Tenant, at the Premises or, prior to Tenant's occupancy of the Premises, at the address set forth on the Lease Summary. Any such notice or other instruments shall be deemed to have been given and received on the day upon which personal delivery is made or, if mailed, then forty-eight (48) hours following the date of mailing. Either party may give notice to the other of any change of address and after the giving of such notice, the address therein specified is deemed to be the address of such party for the giving of notices. If postal service is interrupted or substantially delayed, all notices or other instruments shall be delivered in person or by overnight express mail courier.

14.6 Successors; Joint and Several Liability. The rights and liabilities created by this Lease extend to and bind the successors and assigns of Landlord and the heirs, executors, administrators, and permitted successors and assigns of Tenant. No rights, however, shall inure to the benefit of any transferee unless such Transfer complies with the provisions of Article VIII. If there is at any time more than one Tenant or more than one person constituting Tenant, their covenants shall be considered to be joint and several and shall apply to each and every one of them.

14.7 Captions and Section Numbers. The captions, section numbers, article numbers, and table of contents appearing in this Lease are inserted only as a matter of convenience and in no way affect the substance of this Lease.

14.8 Extended Meanings. The words "hereof," "hereto," "hereunder," and similar expressions used in this Lease relate to the whole of this Lease and not only to the provisions in which such expressions appear. This Lease shall be read with all changes in number and gender as may be appropriate or required by the context. Any reference to Tenant includes, when the context allows, the employees, agents, invitees, and licensees of Tenant and all others over whom Tenant might reasonably be expected to exercise control. This Lease has been fully reviewed and negotiated by each party and their counsel and shall not be more strictly construed against either party.

14.9 Entire Agreement; Governing Law; Time. This Lease and the Exhibits and Riders, if any, attached hereto are incorporated herein and set forth the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements or understandings between them. This Lease and its Exhibits and Riders may not be modified except by agreement in writing executed by Landlord and Tenant. The Executive Director of the Miami Beach Redevelopment Agency shall have the authority to execute modifications to the Lease, on behalf of the Landlord. This Lease shall be construed in accordance with and governed by the laws of the State of Florida. Time is of the essence of this Lease.

14.10 No Partnership. The parties hereby acknowledge that it is not their intention under this Lease to create between themselves a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership, or agency relationship. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Lease, whether based on the calculation of rental or otherwise, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this section shall survive expiration of the Term.

14.11 Quiet Enjoyment. If Tenant pays rent and other charges and fully observes and performs all of its obligations under this Lease, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by Landlord or any person claiming through Landlord.

14.12 Brokerage. Landlord and Tenant each represent and warrant one to the other that except as set forth in the Lease Summary, neither of them has employed any broker in connection with the negotiations of the terms of this Lease or the execution thereof. Landlord and Tenant hereby agree to indemnify and to hold each other harmless against any loss, expense, or liability with respect to any claims for commissions or brokerage fees arising from or out of any breach of the foregoing representation and warranty. Landlord recognizes the broker(s) specified in the Lease Summary as the sole broker(s) with whom Landlord has dealt in this transaction and agrees to pay any commissions determined to be due said broker(s).

14.13 Radon Notice. Chapter 88-285, Laws of Florida, requires the following notice to be provided with respect to the contract for sale and purchase of any Facility, or a rental agreement for any Facility:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a Facility in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in Facilities in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

14.14 Execution. This Lease has been submitted for discussion purposes only and shall not be deemed an offer by either party to the other to enter into this Lease unless and until this Lease shall have been executed by both parties, indicating their acceptance of the terms and conditions contained herein.

14.15 TRIAL BY JURY. LANDLORD AND TENANT EACH HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY ISSUE OR CONTROVERSY ARISING UNDER THIS LEASE.

EXECUTED as of the day and year first above written.

WITNESSES:

LANDLORD:

MIAMI BEACH REDEVELOPMENT AGENCY, a public
body corporate and politic

Rafael E. Granado, Secretary

By: _____
Philip Levine, Chairperson

WITNESS

Date: _____

Print Name:

TENANT:

ARTCONNECTION INTERNATIONAL, INC.

WITNESS

By: _____
Name: _____
Title: _____

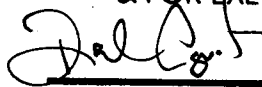
Print Name:


WITNESS

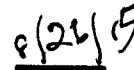
Date: _____

Print Name:

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney 



Date

EXHIBIT "A"

Legal Description

Lots 8, 9, 10, 11, 12 and 13, Block 57, Fisher's First Subdivision of Alton Beach, according to the Plat thereof, as recorded in Plat Book 2, Page 77 of the Public Records of Dade County, Florida, together with all of 16th Street (Avenue "C"), less and except the following described parcel:

BEGINNING at the Southwest corner of Block 54 of said Fisher's First Subdivision of Alton Beach Plat; thence North 88° 0' 53" East along the South line of said Block 54, a distance of 443.08 feet, to the Southeast corner of said Block 54; thence South 07° 35' 04" West, a distance of 96.26 feet, to a point of cusp with a tangent curve concave to the Southwest; thence along the arc of said curve to the left, having a radius of 25.00 feet and a central angel of 90° 00' 00", an arc distance of 39.27 feet, to a point of tangency; thence North 82° 24' 52" West, a distance of 24.75 feet; thence South 88° 00' 53" West along a line 8.00 feet North of and parallel with, as measured at right angles to the North line of Block 57 of said plat, a distance of 382.18 feet to a point on the Easterly Right-of-Way line of Washington Avenue; thence North 01° 59' 11" West along said Easterly Right-of-Way line, a distance of 62.00 feet to the Southwest corner of said Block 54 and the Point of beginning.

Said lands lying and being in the City of Miami Beach and containing 65,910 square feet (1.5131 Acres) more or less.

Site Plan of Retail Space and Location of Premises



EXHIBIT "C"

RULES AND REGULATIONS

1. Security. Landlord may from time to time adopt appropriate systems and procedures for the security or safety of the Retail Space, any persons occupying, using, or entering the same, or any equipment, furnishings, or contents thereof, and Tenant shall comply with Landlord's reasonable requirements relative thereto.
2. Return of Keys. At the end of the Term, Tenant shall promptly return to Landlord all keys for the Retail Space and Premises which are in the possession of Tenant. In the event any Tenant fails to return keys, Landlord may retain \$100.00 of Tenant's security deposit for locksmith work and administration.
3. Repair, Maintenance, Alterations, and Improvements. Tenant shall carry out Tenant's repair, maintenance, alterations, and improvements in the Premises only during times agreed to in advance by Landlord and in a manner which will not interfere with the rights of other Tenant's in the Retail Space.
4. Water Fixtures. Tenant shall not use water fixtures for any purpose for which they are not intended, nor shall water be wasted by tampering with such fixtures. Any cost or damage resulting from such misuse by Tenant shall be paid for by Tenant.
5. Personal Use of Premises. The Premises shall not be used or permitted to be used for residential, lodging, or sleeping purposes or for the storage of personal effects or property not required for business purposes.
6. Heavy Articles. Tenant shall not place in or move about the Premises without Landlord's prior written consent any safe or other heavy article which in Landlord's reasonable opinion may damage the Premises, and Landlord may designate the location of any such heavy articles in the Premises.
7. Bicycles, Animals. Tenant shall not bring any animals or birds into the Retail Space, and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Retail Space except in areas designated from time to time by Landlord for such purposes.
8. Deliveries. Tenant shall ensure that deliveries of supplies, fixtures, equipment, furnishings, wares, and merchandise to the Premises are made through such entrances, elevators, and corridors and at such times as may from time to time be designated by Landlord, and shall promptly pay or cause to be paid to Landlord the cost of repairing any damage in the Retail Space caused by any person making improper deliveries.
9. Solicitations. Landlord reserves the right to restrict or prohibit canvassing, soliciting, or peddling in the Retail Space.
10. Food and Beverages. Only persons approved from time to time by Landlord may prepare, solicit orders for, sell, serve, or distribute foods or beverages in the Retail Space, or use the common areas for any such purpose. Except with Landlord's prior written consent and in accordance with arrangements approved by Landlord, Tenant shall not permit on the Premises the use of equipment for dispensing food or beverages or for the preparation, solicitation of orders for, sale, serving, or distribution of food or beverages.
11. Refuse. Tenant shall place all refuse in proper receptacles provided by Tenant at its expense in the Premises or in receptacles (if any) provided by Landlord for the Retail Space, and shall keep sidewalks and driveways outside the Retail Space, and lobbies, corridors, stairwells, ducts, and shafts of the Retail Space, free of all refuse.

12. Obstructions. Tenant shall not obstruct or place anything in or on the sidewalks or driveways outside the Retail Space or in the lobbies, corridors, stairwells, or other common areas, or use such locations for any purpose except access to and exit from the Premises without Landlord's prior written consent. Landlord may remove at Tenant's expense any such obstruction or thing caused or placed by Tenant (and unauthorized by Landlord) without notice or obligation to Tenant.

13. Proper Conduct. Tenant shall not conduct itself in any manner which is inconsistent with the character of the Retail Space as a first quality retail center or which will impair the comfort and convenience of other Tenant's in the Retail Space.

14. Employees, Agents, and Invitees. In these Rules and Regulations, "Tenant" includes the employees, agents, invitees, and licensees of Tenant and others permitted by Tenant to use or occupy the Premises.

15. Pest Control. In order to maintain satisfactory and uniform pest control throughout the Retail Space, Tenant shall engage for its own Premises and at its sole cost, a qualified pest extermination contractor either designated or approved by Landlord, who shall perform pest control and extermination services in the Premises at such intervals as reasonably required or as may be directed by Landlord.

EXHIBIT "D"

Prohibited Uses

- 1) In no event may the primary business at the Premises engage in the sale of food, alcoholic and non-alcoholic beverage items.
- 2) In no event may the primary business at the Premises be the sale of clothing for men, women and juniors, resort wear, souvenirs, and designer shoes.
- 3) In no event may the primary business at the Premises engage in the sale of swimwear, beach attire or related beach apparel accessories.
- 4) In no event may the primary business at the Premises be used to display and sell athletic footwear, apparel, and athletic apparel accessories.